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OPINION

OF THE CONFLICT OF INTEREST COMMISSIONER PURSUANT TO S.19(3) OF THE *MEMBERS' CONFLICT OF INTEREST ACT*

IN THE MATTER OF A REQUEST BY THE EXECUTIVE COUNCIL AND AN INQUIRY PURSUANT TO S. 21 OF THE *MEMBERS' CONFLICT OF INTEREST ACT* INTO WHETHER **THE HONOURABLE GLEN CLARK, M.L.A.** HAS BEEN IN BREACH OF ANY OF THE SECTIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT* IN CONNECTION WITH THE GRANTING OF APPROVAL-IN-PRINCIPLE OF A GAMING LICENCE FOR THE NORTH BURNABY INN/545738 B.C. LTD.

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I. BACKGROUND

My involvement as Conflict of Interest Commissioner in considering the role, if any, of the Honourable Glen Clark M.L.A in the government's granting of approval in principle for a proposed charitable casino at the North Burnaby Inn began with requests by the member himself. These requests followed the RCMP's execution of search warrants on the home of Mr. Clark on March 2, 1999 in relation to a criminal investigation of matters involving the 545738 B.C. Ltd./ North Burnaby Inn casino proposal[1]. It subsequently became apparent that one of the principals of the company behind this proposal, Mr. Dmitrios Pilarinos, was a friend and neighbour of Mr. Clark's, and that Mr. Pilarinos had played a role in construction work on one or both of Mr. Clark's home and cabin in the Okanagan.

Under the *Members' Conflict of Interest Act* (the "Act"), the opinion of the Conflict of Interest Commissioner with regard to the conduct of a member of the Legislative Assembly or Executive Council (Cabinet) may be requested by a member, about his or her own compliance [s. 18(1)] or about the compliance of another member [s. 19(1)], by a member of the public [s. 19(2)], by the Legislative Assembly as a whole [s.19(4)], or by Executive Council [s.19(3)].

By a request dated March 5, 1999, Mr. Clark, then Premier of British Columbia, asked that I review the Cabinet record on an "urgent priority basis" and provide my interim opinion as to whether it was Cabinet that made the decision to grant approval in principle of a gaming license for the North Burnaby Inn. On March 8, 1999, following a review of the Cabinet records for 1998, I released an interim opinion stating that these records disclosed that no such decision was made by Cabinet.

Also on March 5, 1999, Mr. Clark requested that I provide an opinion as to whether he had been in a conflict of interest in the granting of approval in principle of a gaming license for the North Burnaby Inn.

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[1] The proposal in question was submitted in the name of a company known as 545738 B.C. Ltd. by its principals, Mr. Dmitrios Pilarinos and Mr. Steve Ng. Initially, this proposal contemplated the location of a gaming facility at the North Burnaby Inn in Burnaby, British Columbia and, as a result, has often been referred to by that

On March 12, 1999, Executive Council made the same request pursuant to s.19(3) advising that, at the request of Mr. Clark, this request should replace his earlier request on his own behalf. In subsequent correspondence, I clarified that Executive Council wished my opinion as to whether the Honourable Glen Clark was in breach of any of the sections of the Act, given that it includes prohibitions which are defined in terms other than conflict of interest, and that my investigation should encompass all relevant matters whether before or after the announcement of approval in principle.

Pursuant to s. 21(6) of the Act, my opinion on this matter is to be reported to Executive Council.

II. PROCESS

A request under s.19 of the Act entitles the Commissioner to conduct an inquiry, with the same powers to summon witnesses and documents as a commissioner appointed under the *Inquiry Act*. Following receipt of the request of Executive Council under s.19(3), I exercised my discretion to conduct my investigation of this matter as an inquiry in order to have the benefit of that authority.

I retained counsel, Leonard T. Doust, Q.C. and Lisa Martz of the firm of McCarthy Tétrault, to assist me in my inquiry.

In embarking on my inquiry, I gave serious consideration to the question of whether it was appropriate for me to proceed in light of the ongoing criminal process. I concluded that it was. Executive Council and, by extension, the citizens of the Province, are entitled to know whether or not the former Premier conducted himself in a manner prohibited by the Act. The public importance of such matters is the reason for which the Act, and the office I hold thereunder, were created.

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name rather than by the name of the numbered company. For the sake of accuracy, I have referred to this proposal in this opinion as the "545738 B.C. Ltd./North Burnaby Inn" proposal or as "Mr. Pilarinos' proposal".

Having decided to proceed, I took care to avoid interfering with the criminal investigation by notification to the Special Prosecutors, Mr. Martin R. Taylor, Q.C. and Mr. William B. Smart, Q.C., prior to taking the evidence of witnesses.

In order to become familiar with the process for approving gaming proposals and to understand how the 545738 B.C. Ltd./North Burnaby Inn proposal fits into it, my counsel began by conducting informal interviews with government personnel and obtaining access to extensive documentation in the various government offices involved in the process.

With the assistance of counsel, I identified 22 persons whose knowledge of the subject matter of my inquiry required to be formally explored. I issued a Summons requiring each of them to appear before me and to produce all relevant documents in their possession or control. In some instances I sought and obtained the consent of witnesses to the release to me of earlier statements given to the RCMP or of documents seized from them by the RCMP. This proved to be an efficient means of gaining an early understanding of the nature of the evidence such witnesses had to provide. In addition, with the consent of Mr. Clark, I obtained from the Special Prosecutors a copy of the expert valuations of the work done on Mr. Clark's Vancouver and Okanagan homes prepared for the RCMP.

Evidence of all witnesses called before me was given under oath and recorded by a court reporter who produced a transcript of the proceedings. One witness who was out of the jurisdiction gave his evidence by telephone conference call and subsequently swore an affidavit verifying under oath the accuracy of the transcript produced from the call. Two other witnesses provided me with affidavit evidence to either verify the accuracy of the transcript of their statement to the RCMP or to address limited points of evidence. In conducting my inquiry, I was not bound by the rules of evidence applicable in a court of law. I therefore exercised some discretion in hearing what might, in a different forum, be considered hearsay evidence, but ensured that I gave such evidence only such weight as was appropriate in all of the circumstances.

Examinations were conducted by my counsel, to which I occasionally added questions of my own. Any witness who wished to have counsel present for his or her examination was

accommodated. One witness sought funding of such counsel fees from my office. That application was refused. A copy of my reasons on this application is attached to this report as Appendix A.

The 22 witnesses examined in my inquiry included individuals both inside and outside government. A list of the witnesses and their respective roles at the relevant time is set out below, in the order in which their evidence was received:

Dimitri Vrahnos	-	*friend of Mr. Pilarinos*
Steven Letts	-	*Executive Director, Gaming Audit and Investigation Office, the office of the Ministry of Attorney General charged with responsibility for conducting background checks on those seeking to operate gaming facilities in the Province*
Mark MacKinnon	-	*Executive Director, Lotteries Advisory Committee (which later became the Gaming Policy Secretariat), the department within the Ministry of Employment and Investment with direct responsibility for administering the application process for new gaming facilities*
Derrick Luu	-	*proponent of another charity casino in Burnaby*
Steven Ng	-	*Mr. Pilarinos' partner in the casino proposal*
Katherine Dann	-	*Senior Policy Advisor, Lotteries Advisory Committee/Gaming Policy Secretariat*
Robert Kelly	-	*Ministerial Assistant to Michael Farnworth, Minister of Employment and Investment*
Charles Kang	-	*Deputy Minister of Employment and Investment*
Timothy Gallagher	-	*Ministerial Assistant to Michael Farnworth, Minister of Employment and Investment*
Adrian Dix	-	*Principal Secretary to the Premier (Mr. Clark)*

Suzanne Christensen	-	*Director, Corporate Relations Branch, Ministry of Employment and Investment*
Paschos Katanas	-	*friend of Mr. Pilarinos*
Peter Clark	-	*Chair, Lotteries Advisory Committee*
Joy Illington	-	*Acting Cabinet Secretary*
George Ford	-	*Deputy Minister to the Premier (Mr. Clark)*
Ron Wickstrom	-	*Senior Advisor to the Premier (Mr. Clark)*
Pietro Calendino	-	*M.L.A., Burnaby North*
Dimitrios Pilarinos	-	*casino proponent and friend of Mr. Clark*
Michael Farnworth	-	*Minister of Employment and Investment*
Robert Scarpelli	-	*Consultant, Coopers & Lybrand (later PricewaterhouseCoopers)*
Glen Clark	-	*M.L.A. Vancouver-Kingsway and Premier*
Dale Clark	-	*Mr. Clark's wife*

The witnesses were examined over more than 40 days of hearings. Although the *Vancouver Sun* brought an application requesting that I allow the public access to my hearings, I opted to hold the hearings in private out of deference both to my statutory obligation to provide my opinion to Executive Council, whose prerogative it is to handle the publication of my opinion as it sees fit, and out of concern to avoid any interference with or compromise of the criminal process which was ongoing during the course of my inquiry. A copy of my reasons on the application of the *Vancouver Sun* newspaper is attached to this report as Appendix B.

Partway through my inquiry, I applied to the British Columbia Supreme Court for access to the Information to Obtain a Search Warrant in respect of the warrant executed upon Mr. Clark's residence in order to ensure that I had the opportunity to consider all available

evidence in relation to this matter. Having been granted access to review the Information to Obtain, I concluded that it would be useful for my counsel to have the opportunity to ask certain witnesses appearing before me in my inquiry questions arising from the contents of the Information to Obtain. I therefore applied to the Court and was granted permission to use the Information to Obtain in this way. I was subsequently granted leave to make some limited reference to the contents of the Information to Obtain in this opinion.

I received written submissions from Messrs. David W. Gibbons and Richard S. Fowler, counsel for Mr. Clark, both before the preparation of my initial draft opinion and following their review of same. In addition, Messrs. Gibbons and Fowler made oral submissions to me on behalf of their client. I also provided excerpts of my draft opinion to other witnesses who might consider themselves to be adversely affected by it and afforded them the opportunity to present written and/or oral submissions.

Following the circulation of my first draft opinion, it came to my attention that Minister Michael Farnworth, who had previously testified before me, had additional evidence to provide. Minister Farnworth was recalled, as was Mr. Clark, in order to give him an opportunity to respond. I revised my draft opinion to take the new evidence into account and once again provided it to Mr. Clark for his comment. Other witnesses potentially affected by my revised findings were also provided the relevant excerpts and given the opportunity to respond.

Following receipt of my second draft opinion, Mr. Clark's counsel sought the opportunity to cross-examine Minister Farnworth. I granted this request and convened a hearing for this purpose.

Through counsel for Mr. Clark, I initially received the evidence of Dale Clark by way of affidavit in order to have the benefit of her evidence on the limited points I considered necessary with minimal inconvenience or embarrassment to her. Mr. Gibbons subsequently advised that he considered it necessary for me to hear further from Ms. Clark. I therefore permitted him to call Ms. Clark before me to provide such evidence he thought necessary.

Mr. Gibbons also sought leave to introduce affidavits of three individuals with respect to the accuracy of certain dates that arose from Minister Farnworth's evidence, as well as a brief letter report with respect to a polygraph examination undergone by Mr. Clark. In addition, Mr. Clark's counsel provided me with the analysis of their own quantum surveyor with respect to the value of the work done on Mr. Clark's home, as well as a copy of a statement given to the RCMP by a witness whose evidence I had not otherwise received. I accepted this material into evidence on the basis that I would determine over the course of my deliberations what weight to give it.

I subsequently received further submissions, both written and oral, from counsel for Mr. Clark.

The length and detail of this opinion reflects the nature of my inquiry, which I conducted in accordance with Executive Council's request for a "full investigation". There is no question that this process has taken far longer than I anticipated. However, the broad nature of the opinion I was requested to provide required that I canvass the matter thoroughly.

In an inquiry, one must follow the evidence where it goes. In many cases, the evidence of one witness led me to another. I considered it appropriate to allow witnesses to be represented by counsel of their choice, and, in some cases, this led to delays in my proceeding in order to accommodate counsel's other commitments. On several occasions, hearings were held in the evening or on weekends. The receipt of new evidence from Minister Farnworth, and the necessity of receiving additional evidence as a result, also delayed delivery of my opinion.

Having concluded it was appropriate that my inquiry be conducted in private (for the reasons reviewed above), I was not in a position to keep the public advised of its progress. Nonetheless, I considered it important that when my opinion became public, it would impress upon Members of the Legislative Assembly that, if called into question over a serious matter, their conduct would be the subject of detailed scrutiny by the holder of my office.

Gaming policy has been a source of much attention and controversy in this Province in recent years. While the story of the 545738 B.C. Ltd/North Burnaby Inn proposal is set against

the backdrop of that broader context, I have throughout been mindful that I was not conducting a general inquiry into gaming in British Columbia. I have endeavoured to be thorough in my investigation of the facts of this matter, without losing sight of the specific issues relevant under the Act. I feel that I have achieved an appropriate balance.

III. RELEVANT PROVISIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*

The following are the relevant sections of the Act:

Conflict of interest

2 *(1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise or the power there is the opportunity to further his or her private interest.*

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

3 *A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.*

Insider information

4 *A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.*

Influence

5 *A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.*

Activities on behalf of constituents

6 *This Act does not prohibit the activities in which members normally engage on behalf of constituents*

Accepting extra benefits

7 *(1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance or his or her duties of office.*

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit referred to in subsection (2) exceeds $250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds $250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

(a) the nature of the gift or benefit,

(b) its source, and

(c) the circumstances under which it was given and accepted.

IV. THE FACTS

A. A chronology

Before turning to a narrative overview of the evidence in this matter, I set out here a chronology of the significant events. An explanation of the context and significance of these events is included in the overview which follows.

June 27, 1997	545738 B.C. Ltd incorporated
July 31, 1997	Request for Proposals ("RFP") for new gaming facilities issued by government
November 24, 1997	Messrs. Pilarinos and Ng submit casino proposal in name of 545738 B.C. Ltd. to be located at the North Burnaby Inn
November 28, 1997	Deadline for receipt of gaming proposals
December 17, 1997	Mr. Pilarinos applies to City of Vancouver for building permit in respect of renovations to the Clarks' home in Vancouver
December 29, 1997	Deadline for receipt of required approval from host local governments
January 6, 1998	Government announces that 32 (later revised to 37) of 49 proposals have moved to next stage
February, 1998	Michael Farnworth appointed Minister of Employment and Investment, with responsibility for RFP process
February 17, 1998	Presentation by the 545738 B.C. Ltd./North Burnaby Inn proponents to members of the Evaluation Committee reviewing proposals

April 29, 1998	First Cabinet Submission in regard to gaming proposals
May 6, 1998	Cabinet meeting: consideration of first group of proposals
May 14, 1998	Government announcement of "approval in principle" of first three proposals
May/June 1998	Dmitrios Pilarinos oversees renovations to Mr. Clark's home
May 26, 1998	Burnaby City Council writes to Lotteries Advisory Committee to confirm that it will not consider a change in zoning to allow a charitable gaming facility at the North Burnaby Inn
July 1998	Meeting between Mr. Clark and Minister Farnworth to review decisions for upcoming Cabinet meeting
July 9, 1998	Second Cabinet Submission in regard to gaming proposals
July 17, 1998	Date of Adrian Dix memo to file regarding Premier's direction that he not be involved in any decision re: the North Burnaby Inn
July 29, 1998	Cabinet meeting: consideration of remaining proposals
August 1998	Dmitrios Pilarinos assists Mr. Clark with work on his Okanagan cabin
August 2, 1998	Date of Clarks' final payment to Mr. Pilarinos for expenses in relation to renovation work on their home in Vancouver
August 14, 1998	Government announcement of "approval in principle" of next four proposals
August 26, 1998	Burnaby City Council writes to Minister Farnworth to advise that it does not support a gaming facility at the North Burnaby Inn and will not consider a change in zoning to allow it
September, 1998	Request from Gaming Policy Secretariat for Gaming Audit and Investigation Office ("GAIO") to commence investigation of 545738 B.C. Ltd. and its principals

October 10, 1998	GAIO investigation of 545738 B.C. Ltd. commenced
December 17, 1998	Government announcement of "approval in principle" of last four proposals (including 545738 B.C. Ltd./North Burnaby Inn proposal)
January 25, 1999	Mr. Pilarinos and Mr. Ng write to Minister Farnworth requesting permission to amend their proposal to allow for change in location from North Burnaby Inn to Halifax Street site
February 8/9, 1999	Dmitri Vrahnos sends warning letter to Dmitrios Pilarinos
February 9/10, 1999	Dmitri Vrahnos faxes warning letter to Mr. Clark's constituency office
February 17, 1999	Minister Farnworth sends letter to Messrs. Pilarinos and Ng rejecting request for location change
March 2, 1999	Search warrants executed on Mr. Clark's home
April 28, 1999	GAIO denies registration to 545738 B.C. Ltd.

B. An overview

What follows is a summary of the evidence I received with respect to the general course of events in this matter. Further discussion of areas requiring particular analysis in order to evaluate whether or not there has been a violation of the Act is set out subsequently.

1. The "RFP process"

In March 1997, the government announced a new gaming policy which provided for a limited expansion of gaming in the Province through the approval of new bingo and casino facilities. A Lotteries Advisory Committee was subsequently appointed by Order-in-Council to assist with the implementation of this policy, including the administration of the process for the selection of which facilities would be approved. On July 31, 1997, the government issued a

"Request for Proposals" or "RFP" which outlined the terms and conditions under which it would evaluate proposed casinos and bingo halls. The evaluation process contained in this document, which was developed with the assistance of a private accounting firm, came to be known as the "RFP process". It was in this process that Mr. Pilarinos and his business partner, Mr. Steve Ng, submitted their proposal for a new charity casino to be operated at the North Burnaby Inn.

The RFP set a deadline of November 28, 1997 for submission of proposals and specified certain required contents, including evidence that the local government with jurisdiction over the location of the proposed facility had agreed in principle to accept a new gaming facility. The RFP identified the criteria by which proposals would be evaluated and explained that, following the evaluation, the Lotteries Advisory Committee would make recommendations to Cabinet which would then select the proposals to be approved in principle. Successful proponents would thereafter be required to negotiate operating agreements with the government bodies responsible for the regulation of gaming as part of the necessary final approval.

The RFP also required proponents to provide extensive personal and financial background information to the Gaming Audit and Investigation Office ("GAIO"), a department within the Ministry of Attorney General responsible for determining the suitability of individuals and companies for participation in gaming in terms of their being free from criminal associations of any kind. Those that qualified would be "registered" with GAIO. Only individuals and companies registered with GAIO are permitted to operate gaming facilities in the Province.

The deadline for the submission of proposals was November 28, 1997. The deadline for receipt of evidence of host local government support was extended to December 29, 1997.

2. The 545738 B.C. Ltd./North Burnaby Inn proposal

The evidence of Dmitrios Pilarinos is that he became interested in submitting a proposal in the RFP process when he was approached by Mr. Paschos Katanas, a gentleman he knew from the Lumbermen's Club, a social club which operated at the North Burnaby Inn. Mr. Katanas had experience in the gambling business and was enthusiastic about applying under the government's

gaming expansion policy for approval to set up a new casino. It was through Mr. Katanas that Mr. Pilarinos met with Mr. Steve Ng, the owner of the North Burnaby Inn. Mr. Ng had experience in managing his family's investment properties and, in the North Burnaby Inn, a possible location for a new casino.

Mr. Katanas, Mr. Ng and Mr. Pilarinos agreed to become partners in submitting a proposal for a charitable casino in the RFP process. 545738 B.C. Ltd., the corporate vehicle for the casino proposal, was incorporated on June 27, 1997. The partners retained professionals -- lawyers, accountants and architects -- to assist them in developing their proposal, which ultimately contemplated a 30 table charitable casino operating at the North Burnaby Inn in Burnaby.

Sometime prior to the submission of the proposal on November 24, 1997, Mr. Katanas gave up his interest in 545738 B.C. Ltd. and the proposal went forward in the names of Messrs. Pilarinos and Ng only.

The only other proposal for a charity casino in Burnaby in the RFP process was submitted by a Mr. Derrick Luu through a company known as 471438 B.C. Ltd. Mr. Luu's proposal was for a casino to be located on a site he owned on Halifax Street in Burnaby.

At the time of the RFP process, Burnaby was one of the few municipalities in the Lower Mainland that was not publicly opposed to the expansion of gaming within its boundaries. In November 1997, just prior to submission of the 545738 B.C. Ltd./North Burnaby proposal, Burnaby City Council passed a resolution in response to the Province's RFP process stating that it would consider additional gaming facilities in Burnaby subject to a number of preferences, including that consideration be given to locating any new charitable casino at a particular site on Halifax Street in Burnaby which had been rezoned to allow this use (the property owned by Mr. Luu). The City's resolution emphasized that any final decision with respect to the location of additional gaming facilities in Burnaby was contingent upon compliance with the City's zoning requirements.

The zoning of the North Burnaby Inn location proposed by Mr. Pilarinos and his partner did not allow for the operation of a casino. In December 1997, Mr. Ng made a presentation to Burnaby Council seeking support for their casino proposal. He received the clear message that Council was not in favour of the location of a casino at the North Burnaby Inn, as it was opposed by local merchants and did not fit with the City's plan for the area, and Council would therefore not be willing to provide the necessary re-zoning. As a result, Messrs. Ng and Pilarinos began to consider the possibility of modifying their proposal to provide for a different location.

3. Dmitrios Pilarinos and Glen Clark

Mr. Clark and Mr. Pilarinos met a few years prior to the events in question as a result of their children attending the same preschool. Their wives came to know each other through their involvement in the preschool, and both parents and children became friends. Until the publicity surrounding the events leading up to this inquiry, Mr. Clark and Mr. Pilarinos had frequent contact through their children's activities and through social activities in the neighbourhood, including, in particular, regular pot-luck dinners involving a group of families whose children attended the preschool. During the summer of 1998, the Pilarinos family spent time at the Clarks' cabin in the Okanagan.

Both men agree that they became "good friends", although Mr. Clark points out that the friendship was really defined by the relationship between their children and neighbourhood activities.

Mr. Pilarinos testified that he told Mr. Clark of his intention to submit a proposal in the RFP process during the fall of 1997. A more detailed consideration of the evidence with respect to communications between Mr. Pilarinos and Mr. Clark in regard to the 545738 B.C. Ltd./North Burnaby Inn proposal is set out in the section of this opinion which follows this general overview.

4. The construction work

After moving to Canada from Greece in 1981, Mr. Pilarinos first worked in his brother's tile contracting business and in a restaurant. He subsequently started and ran, in succession, his own tile contracting, house construction and glass manufacturing businesses. In 1994, after selling his glass manufacturing business, he returned to construction, starting a new company which did small scale renovation work.

According to Mr. Pilarinos, Dale Clark, Mr. Clark's wife, began talking to him about a possible renovation to the master bedroom in the Clarks' home in early 1996 or 1997. Sometime later, likely during the summer of 1997, the Clarks told Mr. Pilarinos that they would like him to go ahead with carrying out the renovation for them, including replacement of the roof in order to deal with leaking problems. Mr. Pilarinos explained that, at the time, he was involved in other jobs and was planning a trip to Greece and so he did not pursue the matter. In the end, it was not until December 1997 that Mr. Pilarinos began taking steps such as ordering building plans and applying for the building permit, with the idea of carrying out the work the following summer.

To Mr. Clark's recollection, although he and his wife had discussed the possibility of the renovation with Mr. Pilarinos, they gave him no instruction to proceed. Ms. Clark recalls that, although she consulted Mr. Pilarinos when an episode of severe leaking in the fall of 1997 made it clear that the roof on the Clarks' home needed to be replaced, she was initially considering hiring her cousin to do the renovation work. Both Mr. and Ms. Clark testified that Mr. Pilarinos took the steps of obtaining plans and a building permit without their approval and that his presentation of the building permit to them around Christmas of 1997 was unexpected.

Nonetheless, the Clarks agreed to have Mr. Pilarinos proceed with the renovation. Mr. Pilarinos applied for the building permit on December 17, 1997, it was issued to him on February 10, 1998, and the project was carried out early in the summer of 1998.

Mr. Pilarinos provided the Clarks with an initial estimated cost of between $7,000 and $10,000. Ms. Clark recalls that Mr. Pilarinos quoted a figure of approximately $7,000 at first, but, subsequently, when they sat down to review the costs more seriously, Mr. Pilarinos calculated that the work would likely cost approximately $10,000. Although he did not tell the Clarks, it was Mr. Pilarinos' evidence that it was his intention from the outset to refuse to accept any payment for his own work on the project. Mr. Clark recalls that he and his wife specifically advised Mr. Pilarinos that, given the size of the project, they would insist on paying him for his time, as they were aware that he had on occasion done minor work for others in the neighbourhood and refused to accept payment.

The project involved enlarging the master bedroom by putting an addition onto the back of the house and installing certain other improvements such as a gas fireplace and a new deck with doors opening on to it, as well as replacing the entire roof.

The work was carried out during the summer of 1998 over approximately a month or so. Mr. Pilarinos' contribution was essentially to carry out the responsibilities of a general contractor, including obtaining the building plans and hiring and supervising each of the sub-contractors. In addition, Mr. Pilarinos did the framing work for the addition and the balcony, replaced fibreglass installation on an existing main floor deck, and helped Mr. Clark put siding on the house.

In general, it was Mr. Pilarinos who purchased the materials and paid the contractors. Ms. Clark explained that she gave Mr. Pilarinos lump sum payments from which he could pay the necessary expenses without her having to write frequent cheques for small amounts. In June 1998, she gave Mr. Pilarinos an initial cheque in the amount of $3,000 to get the project started, and, about one week later, an additional cheque in the amount of $5,000. Approximately $3,600 worth of materials appear to have been paid for by the Clarks directly. In addition, Mr. Clark reimbursed Mr. Pilarinos for his expenses associated with obtaining the building plans and the necessary permits and approvals from the City of Vancouver. Ms. Clark did not specifically discuss with Mr. Pilarinos how much he was to receive for his role on the job but she recalls that, on several occasions, she told him that she and Mr. Clark wanted to make sure that he was paid.

Ms. Clark recalls that Mr. Pilarinos generally indicated that she need not worry, that he would ensure he was adequately compensated.

The construction work was completed by July 1998. Ms. Clark recalls that, after the construction was over, she wanted to clear up her debts. She asked Mr. Pilarinos on a number of occasions how much was owed and he said he had yet to put it all together but that he would get a bill to her. Based on her informal discussions with Mr. Pilarinos, Ms. Clark had the impression that approximately $2,500 remained outstanding for the costs of the construction. Because she wanted to ensure that Mr. Pilarinos was paid for his time and effort, Ms. Clark decided to double this amount. In mid to late July, she wrote a cheque in the amount of $5,000 and brought it to Mr. Pilarinos' house, leaving it with his wife. Mr. Pilarinos' recollection is that this cheque was for approximately $9,000. However, both Mr. and Ms. Clark are clear that the cheque was for $5,000.

In any event, both Mr. Clark and Mr. Pilarinos agree that at the beginning of August 1998, following his return from vacation, Mr. Pilarinos brought the cheque back to the Clarks. He insisted that, as they were good friends who had helped him out on many occasions, he was not prepared to accept money for himself and he ripped the cheque up, as appears to be confirmed by the cheque number missing from the Clarks' banking records for this period. Mr. Clark therefore gave Pilarinos a new cheque dated August 1, 1998 in the amount of $3,200 to cover the outstanding expenses incurred by Mr. Pilarinos, as set out on a list presented to him by Mr. Pilarinos. According to Mr. Pilarinos, this list of expenses, which totalled $11,106.95 (exclusive of the cost of the building plans and the City of Vancouver expenses), did not include any amount for Mr. Pilarinos' own time, apart from approximately $200 allocated to his work putting fibreglass on the deck at the Clarks' home.

Later in August, Mr. Pilarinos and his family were invited to spend some time with the Clarks at their cabin near Penticton. Mr. Clark told Mr. Pilarinos of his intention to rebuild the deck on the rear of the cabin during his stay there and Mr. Pilarinos agreed to help him. Mr. Clark explained what he wanted to do and Mr. Pilarinos gave him advice on how it should be done and how much lumber would be required. Before leaving Vancouver, Mr. Clark and Mr. Pilarinos went together to purchase a quantity of lumber to take to the cabin. Mr. Pilarinos

paid for the lumber and was reimbursed by Ms. Clark with a cheque for $950 written on August 12, 1998. Mr. Pilarinos also brought with him some lumber, approximately $200 worth he estimates, which he obtained from his friend Mr. Katanas. Mr. Pilarinos had built a dancing floor for Mr. Katanas' wedding, and after it was dismantled following the event, Mr. Katanas had invited Mr. Pilarinos to use the wood as he wished. Mr. Pilarinos also brought his compressor and nail gun to use on the project.

The Pilarinos family spent approximately 10 days or two weeks with the Clarks at their cabin, and during that time, Mr. Pilarinos spent somewhere between one and three days helping Mr. Clark build the new deck. While there, Mr. Pilarinos and Mr. Clark purchased additional lumber which was paid for by Mr. Clark himself. Mr. Clark explained that summer guests to his cabin often helped out with projects he was working on and that he did not offer to pay any money to Mr. Pilarinos for his assistance.

Since he would not accept any payment for his efforts on the renovation of the Clarks' home in Vancouver, Mr. Clark testified that he arranged to purchase a hunting knife made by a native carver from the Yukon (the value of which was not in evidence) as a token of appreciation. Mr. Clark gave the knife to Mr. Pilarinos in early February 1999.

5. Government consideration of the 545738/North Burnaby Inn proposal

The evaluation process

The proposals submitted in the RFP process by the end of November 1997 were evaluated according to pre-established criteria: corporate experience/expertise, executive experience/expertise, financial strength and capacity, strategic and operational business plan (including marketing, community relations, development plans/costs, human resources, security and surveillance and internal controls), and knowledge of relevant British Columbia markets. Evaluation teams made up of professional consultants retained to assist in the administration of the RFP process and personnel from the British Columbia Lottery Corporation, the Gaming Audit and Investigation Office ("GAIO") and the Lotteries Advisory Committee staff scored the

proposals in late 1997 or early 1998 according to a point scale assigned to each criteria. These evaluations were finalized by an Evaluation Committee which was to report to the Lotteries Advisory Committee.

The evaluation conducted by GAIO to determine suitability for registration was conducted separately. However, given that the GAIO investigation was a costly, time-consuming and relatively invasive process, Lotteries Advisory Committee staff decided it would be appropriate to provide GAIO with their informal advice as to which investigations it ought to prioritize based on their preliminary assessment of which proposals were more likely to succeed. Based upon this advice, GAIO commenced a number of investigations in the first few months of 1998. The 545738 B.C. Ltd./North Burnaby Inn proposal was not among those identified to GAIO as being a priority for investigation. For reasons which will be discussed further below, it was not until September of 1998 that GAIO was asked to carry out an investigation of the 545738 B.C. Ltd./North Burnaby Inn proposal.

The proponents of those proposals which scored sufficiently well on preliminary scoring were invited to attend a meeting with members of the Evaluation Committee where they would have the opportunity to make a brief presentation and to discuss aspects of their proposal. The 545738 B.C. Ltd. /North Burnaby Inn proposal passed this threshold and Messrs. Ng and Pilarinos attended a meeting held in February 1998. A document created for members of the Evaluation Committee in preparation for the meeting identified a number of concerns with regard to the proposal including the proponents' lack of experience in the development, start-up and operation of a gaming facility, unusually low projected expenses, the need to identify a target market, and lack of detail on human resources, internal control or security and surveillance.

By the time of this meeting, Messrs. Ng and Pilarinos had been making inquiries as to an alternate location for their casino proposal and were looking in particular at a possible Metrotown location, where they understood the City of Burnaby was more likely to provide zoning approval for a casino. Although they made reference to this fact in their discussions with the Committee, they did not specifically inquire as to whether such a change to their proposal would be allowed and no advice was given to them in this regard at the meeting.

The Honourable Michael Farnworth succeeded the Honourable Dan Miller as Minister of Employment and Investment in February 1998, when the evaluation of gaming proposals in the RFP process was still underway. He was thus the Minister responsible for gaming throughout the period during which government's approval in principle of the successful proposals was announced.

Minister Farnworth was aware from the outset that Mr. Clark had a relationship with one of the proponents in the RFP process. A day or two prior to his formal appointment as Minister of Employment and Investment, Minister Farnworth met with Mr. Clark in his office and was advised that he would be receiving this portfolio, which included responsibility for gaming. In the ensuing discussion, during which Mr. Clark emphasized his concerns about gaming policy generally, Mr. Clark advised the Minister that a friend of his had submitted a proposal in the RFP process. Minister Farnworth's recollection is that Mr. Clark specified that the proposal in question was for a gaming facility in Burnaby, if not at the North Burnaby Inn in particular. Mr. Clark testified that he certainly referred to Mr. Pilarinos by name, but he cannot be sure if he specified that Mr. Pilarinos' proposal was for a casino in Burnaby. In any event, according to both Minister Farnworth and Mr. Clark, Mr. Clark told Minister Farnworth that as a result of this relationship he did not want to be involved in consideration of his friend's proposal, and the Minister would therefore have to handle the matter himself.

At some point later, Minister Farnworth mentioned the fact of Mr. Clark's friendship with a proponent to his Ministerial Assistant, Mr. Tim Gallagher, and stated that Mr. Clark should therefore not become involved. Mr. Gallagher's recollection is that Minister Farnworth mentioned only that a proponent was a neighbour and constituent of Mr.Clark, and that he, Mr. Gallagher, was unaware of any friendship between Mr. Clark and the proponent.

It had initially been anticipated that the evaluations of the proposals would be presented to the members of the Lotteries Advisory Committee, each of whom had been appointed by Order-in-Council for a one year term, and that this Committee would make recommendations to Cabinet. However, the evaluation process was ongoing as the expiry of Lottery Advisory Committee appointments approached. It was decided that these appointments would be allowed to lapse, in particular, because the Lotteries Advisory Committee had become associated with

many of the controversial areas relating to gaming policy generally and it was felt preferable for the RFP process to proceed under new auspices. The staff of the Lotteries Advisory Committee who had been working on the RFP process were therefore reconstituted as the Gaming Policy Secretariat, with the results of their evaluation going forward to Cabinet through a submission presented by the Minister of Employment and Investment.

Cabinet submissions in respect of the RFP process were prepared for the Minister's signature by Gaming Policy Secretariat staff in consultation with the Minister and personnel from his staff. The first of these was dated April 29, 1998 and dealt with proposals from the Kootenays/Northern B.C. Due to the smaller number of proposals and the shorter construction season in those areas, the decision was made to bring these proposals forward for decision first. Approval in principle of three proposals in the Kootenays/Northern B.C. was announced May 14, 1998, in accordance with decisions made at a Cabinet meeting earlier that month.

The remaining proposals, which had been geographically grouped in terms of the Thompson-Okanagan /Vancouver Island and the Lower Mainland, were to be dealt with subsequently. Sometime after the first Cabinet submission was prepared, Minister Farnworth gave the instruction that Cabinet submissions should not include recommendations as to which specific proposals ought to be approved but should instead simply set out the results of the evaluation process. In his testimony, Minister Farnworth confirmed that this reflected his view that the results of the evaluation process were not determinative by themselves, as factors of a more political nature, such as local controversy about any given proposal, might also need to be taken into account in deciding which proposals would receive approval in principle.

In May 1998 and again in August 1998, the City of Burnaby wrote to the Lotteries Advisory Committee (whose responsibilities had by then been assumed by the Gaming Policy Secretariat) specifying that Council did not support a charitable gaming facility at the North Burnaby Inn, and was not prepared to consider re-zoning the Hastings Street area in which the North Burnaby Inn was located to allow for a casino. This information was not included in the evaluation material about the 545738 B.C. Ltd./North Burnaby Inn proposal, as zoning was not specifically addressed by any of the criteria. However, the position of Burnaby Council in respect of the North Burnaby Inn location was brought to the Minister's attention.

The second Cabinet submission prepared with respect to proposals in the RFP process was dated July 9, 1998, and included a summary of the evaluation results with respect to all the remaining proposals, including the 545738 B.C. Ltd./North Burnaby Inn proposal. Although Mr. Clark expects that he would have received this material, he cannot recall whether he read the evaluation for Mr. Pilarinos' proposal.

The 545738 B.C. Ltd. /North Burnaby Inn proposal scored 88 points out of a possible 190 (46%). Under "Ability to Deliver", the overall comments provided with the final evaluation of this proposal stated: "While the Proponent has demonstrated the necessary minimal amount of gaming experience required to operate a gaming facility, they were lacking on the Corporate/Executive Experience and provided unrealistic financial projections." Under "Likelihood of Project Success", the overall comments stated: "Given the Proponent's lack of experience in the operation of a gaming facility, the likelihood of project success is limited". From the evidence I received, I am satisfied that those involved in the evaluation process at the Lotteries Advisory Committee/Gaming Policy Secretariat clearly did not expect that this proposal would receive approval in principle.

The other charitable casino proposal in Burnaby, that of Mr. Luu, received an even lower score: 56 out of a possible 190 points (26%).

Lead-up to July Cabinet meeting

As Premier, Mr. Clark played a role in determining which items would be placed on the agenda of Cabinet meetings. Prior to bringing the remaining proposals forward to Cabinet in July 1998, Minister Farnworth met with Mr. Clark to advise him of his intentions with respect to the handling of these matters. Minister Farnworth indicated which specific proposals he was going to be recommending to Cabinet for approval in principle, and, as is discussed further below, there was some discussion of issues in relation to the outstanding proposals. Minister Farnworth does not recall any particular discussion as to whether he or Cabinet would have decision-making responsibility for the outstanding Lower Mainland proposals, which included the 545738 B.C. Ltd./North Burnaby Inn proposal. Mr. Clark, for his part, recalls that the Minister proposed that consideration of the remaining proposals be delegated to the Minister.

Prior to speaking with Mr. Clark in regard to the decisions to be made by Cabinet, Minister Farnworth had a similar conversation with Mr. Adrian Dix, Mr. Clark's Principal Secretary. Minister Farnworth recalls that during the course of this conversation, he mentioned that one of the proponents of the North Burnaby Inn proposal was a friend of the Premier. There was no discussion as to how this fact ought to be handled when the matter came before Cabinet.

Mr. Dix recalls that it was Mr. Clark who first advised him that a friend of his from the neighbourhood was involved in one of the Burnaby casino proposals and that therefore Mr. Clark, did not want to be involved in the decision with respect to that proposal. This arose during one of their regular meetings around the time it became apparent that Minister Farnworth would be bringing the proposals before Cabinet in July. Mr. Dix testified that during the meeting he made notes of this information in a notebook which he used. Shortly thereafter, Mr. Dix mentioned the matter to Minister Farnworth and learned that, somewhat to his surprise, the Minister was already aware of it. Mr. Dix recalls that he advised Minister Farnworth that Mr. Clark did not want to be involved in the decision with respect to his friend's proposal and that Minister Farnworth assured him that he would ensure that Mr. Clark was not involved.

Mr. Dix testified that at the end of the week, on July 17, 1998, he wrote out a memorandum in his notebook documenting these events. Several months later, in September or October, in the course of going through his notebook when he was finished with it to ensure that he had done everything he needed to, Mr. Dix determined that he ought to type his notes into a memorandum to file. After having done so, he ripped out the original pages from his bound notebook and destroyed them. He testified that this was in accordance with his usual practice. Mr. Dix dated the memorandum July 17, 1998, the date of the notes in his notebook, although it was typed up in September or early October 1998. Mr. Dix then took the additional steps of obtaining the date stamp for "Office of the Premier" from his secretary's desk, turning the date back to July 17, 1998, and stamping the memorandum with that date as well. Mr. Dix said he did so to reinforce the date on which he had written up the contents of memorandum. He did not record the date on which the typed memorandum itself was prepared. Mr. Dix placed the memorandum in his personal files as a record of his discussion with the Premier and the steps he had taken.

Mr. Dix testified that he had occasion to share the memorandum with Mr. Ron Wickstrom, another member of the Premier's political staff, in or around December 1998. Mr. Wickstrom advised Mr. Dix that he had received a telephone call from either Mr. Pietro Calendino, the M.L.A. for Burnaby North, or a member of his staff, in which concern was expressed about the prospect of approval in principle of a casino at the North Burnaby Inn given local opposition. For his part, Mr. Calendino does not recall such a conversation and could not say whether such a call was placed by a member of his staff.

Mr. Dix instructed Mr. Wickstrom that he was not to get involved in the matter at all, and subsequently gave Mr. Wickstrom a copy of the memorandum he had prepared by way of explanation. Mr. Wickstrom placed the memorandum in his own files.

Approval in principle

In accordance with the discussions between Minister Farnworth and Mr. Clark, decisions were made with respect to approval in principle of a number of additional gaming proposals at the Cabinet meeting on July 29, 1998, including a proposal for New Westminster. Decisions with respect to several other proposals, including those in Burnaby, remained outstanding. The 545738 B.C. Ltd./North Burnaby Inn proposal was not specifically discussed, beyond noting that a decision with respect to it was yet to be made.

The relevant aspect of the discussion of gaming proposals at Cabinet for these purposes is that there was a concern that the revenue expected from the proposals which had been approved fell short of meeting the targets which the government had hoped to achieve through the RFP process. The sense was that an effort ought to be made to see if there was an appropriate candidate for approval from amongst the remaining proposals, with particular attention to those from the Lower Mainland, where the high population concentration was likely to lead to the greatest revenues. Minister Farnworth left the Cabinet meeting with the understanding that following further consideration of the issues associated with outstanding proposals, which included the concerns of local municipalities, it was his responsibility to determine which of them ought to receive approval in principle.

The minute of the Cabinet meeting relating to the authority granted to Minister Farnworth states as follows:

> "Cabinet authorized the Minister of Employment and Investment, to finalize and execute agreements for proposals approved in principle, upon satisfactory resolution of all outstanding issues. Two issues that need to be addressed are confirmation of local support and license conditions regarding public safety and order for the public who are coming to and from the gaming facilities.
>
> The Minister of Employment and Investment is authorized to further consider whether market analysis and local conditions could support new gaming facilities in the Thompson Okanagan and the Lower Mainland."

It is not at all clear to me how these words might be said to convey a delegation of decision-making authority to the Minister, nor, I understand from the evidence I received, was it clear to others who reviewed the minute following the July 29 Cabinet meeting.

Ms. Joy Illington, Acting Cabinet Secretary at the time, who was present at the Cabinet meeting and prepared the minutes, testified that it was her understanding that Cabinet wished Minister Farnworth to determine which proposals would best allow government to meet its revenue targets. Although the minute does not include a specific delegation from Cabinet to the Minister of authority to grant approval in principle, it was her impression from the discussion that Cabinet did not wish to consider the matter any further, and that it was therefore not necessary for the Minister to bring the proposals back to Cabinet for decisions with respect to approval in principle.

In any event, it is clear that Minister Farnworth considered himself to have been granted the authority by Cabinet to make decisions with respect to approval in principle.

Approval in principle of four proposals discussed at the July 29, 1998 Cabinet meeting was announced by the government on August 14, 1998.

Following the Cabinet meeting and over the course of the fall of 1998, Minister Farnworth considered the options available from among the remaining proposals in consultation

with his staff, particularly his Ministerial Assistant, Mr. Tim Gallagher. Minister Farnworth testified that, given the government objective of obtaining revenue from new gaming facilities, he felt he needed to identify at least one other proposal from the Lower Mainland for approval in principle.

It was during late August or early September 1998 that staff of the Gaming Policy Secretariat learned for the first time, from Mr. Gallagher, that the Minister was seriously considering approval of the 545738 B.C. Ltd./North Burnaby Inn proposal. This came as a great surprise. Both Mr. MacKinnon and Ms. Katherine Dann, a senior member of his staff, raised with Mr. Gallagher the negative comments made in the evaluation of this proposal, its overall low score, and the unlikelihood that the City of Burnaby would provide the zoning approval necessary for the casino to proceed.

In light of the information that the proposal was under consideration, and at Mr. Gallagher's request, Mr. MacKinnon contacted GAIO, and upon confirming that the investigation of the proponents of this proposal had yet to proceed, specifically asked that it be initiated. This investigation was commenced on October 10, 1998. Over the course of the fall, Mr. MacKinnon contacted Mr. Steve Letts, Executive Director of GAIO for periodic updates with respect to the investigation. Mr. Letts advised Mr. MacKinnon that there were serious concerns associated with the investigation, some of which could not be disclosed, and that it was not possible to determine when the investigation would be concluded. Mr. MacKinnon's evidence is that he passed this information on to Mr. Gallagher, along with his own misgivings about the proposal arising from the evaluation.

Mr. Gallagher denies that Mr. MacKinnon told him that GAIO had identified serious concerns about the 545738 B.C. Ltd./North Burnaby Inn proposal.

Mr. Letts also advised Mr. MacKinnon that the investigation had linked the proponents to the Lumbermen's Club at the North Burnaby Inn, which was the subject of an ongoing and complex RCMP investigation. Mr. Letts specifically asked Mr. MacKinnon to keep this information in confidence so as not to jeopardize the RCMP investigation and Mr. MacKinnon therefore refrained from disclosing it to Mr. Gallagher.

Minister Farnworth's evidence is that he was not advised of the concerns expressed by GAIO with respect to their background investigation of the 545738 B.C. Ltd./North Burnaby Inn proposal, nor was he even aware that the investigation was the subject of communication between his office and the Gaming Policy Secretariat.

Minister Farnworth testified that opposition to certain of the casino proposals in the Lower Mainland led him to conclude that he could not grant them approval in principle. This left him with only the two Burnaby proposals. As the Halifax Street proposal had scored significantly lower than others which had received approval in principle, he did not feel he could approve it. Although the 545738 B.C. Ltd./North Burnaby Inn proposal had scored higher, it also was in the low range. Minister Farnworth testified that he was concerned that, given the fact that one of the principals behind the proposal was a friend of the Premier's, approval of this relatively low-scoring proposal might look bad for the government. As a result, Minister Farnworth concluded that he did not wish this proposal to proceed.

Prior to making a final decision, the Minister spoke with the mayor of Burnaby who confirmed that Burnaby City Council would definitely not provide the zoning approval necessary to operate a casino at the North Burnaby Inn.

Minister Farnworth therefore opted to grant approval in principle to the 545738 B.C. Ltd./North Burnaby Inn proposal with the express condition that the approval was subject to obtaining zoning permission from the City of Burnaby. Minister Farnworth testified that he did so only because he was confident that the City would not allow the proposal to proceed. However, it was consistent with the objectives of the provincial government to provide the approval in principle for another casino in the Lower Mainland and to allow the process to play itself out at the municipal level.

Minister Farnworth also testified that he felt that approval of the proposal would make the Premier "happy" in that it would allow him to face his friend with the scenario that his proposal had received favourable consideration by the provincial government, and could not proceed only as a result of the position of the municipality.

Minister Farnworth believes that he reached the decision with respect to approval in principle of the proposal in late September or October 1998. He did not consider it significant that he had not received formal confirmation of the successful registration of the proponents by GAIO by the time of his decision to grant approval in principle. Registration with GAIO would clearly have to be obtained as a prerequisite to a facility going into operation, along with the successful conclusion of negotiations with the other regulatory authorities responsible for gaming. He recalls that he was not made aware of the GAIO registration status of proposals at the time of approval in principle, and considered that this would be addressed at the final approval stage. It was his understanding that the GAIO investigation process was still ongoing at the time approval in principle was announced for some of the other gaming proposals.

In fact, no other proposal received approval in principle without the Gaming Policy Secretariat having received either formal confirmation of GAIO registration, or informal confirmation from GAIO that, although the investigation was not entirely complete, registration was fully anticipated.

Request to change locations

In the weeks just prior to the announcement of approval in principle of the 545738 B.C. Ltd./North Burnaby Inn proposal, Messrs. Ng and Pilarinos were contacted by the M.L.A. for Burnaby North, Pietro Calendino. Mr. Calendino had repeatedly been contacted by Derek Luu, the proponent of the other Burnaby charity casino, seeking assistance to expedite the decision-making process. In December 1998, Mr. Calendino, who was aware of the controversy surrounding the location of a casino at the North Burnaby Inn, contacted Mr. Ng and Mr. Luu with the specific suggestion that they consider cooperating in such a way as to make use of Mr. Luu's site on Halifax Street in Burnaby, which had already received zoning for a casino. Mr. Calendino testified that he developed this idea as a result of an informal conversation he had with Minister Farnworth about the Burnaby proposals one day in the Legislative Assembly. During that conversation, Minister Farnworth explained to Mr. Calendino that the 545738 B.C. Ltd./ North Burnaby Inn proposal had scored much higher than Mr. Luu's proposal. Mr. Calendino also recalls that Minister Farnworth mused about the possibility of the proponents

of these two proposals working together, which led Mr. Calendino to make this suggestion to them. Minister Farnworth, for his part, does not specifically recall making such a comment, although they may have touched on this question during the conversation. However, his view at the time was that such a change could only take place as part of an entirely new proposal submitted in a subsequent process.

Approval in principle of the 545738 B.C. Ltd./North Burnaby Inn proposal was announced on December 17, 1998. Mr. Clark testified that he was surprised to learn of this decision from media reports, both because he would have expected to receive some advance warning of the announcement of such a high profile decision, and because it was his impression that Minister Farnworth was to bring his recommendations for approval in principle back to Cabinet for final approval. He telephoned Minister Farnworth on December 17 and expressed these views. Minister Farnworth explained his understanding that Cabinet had delegated the decision-making authority to him. Minister Farnworth recalls that he told Mr. Clark at that time that the proposal would likely not go ahead, and that Mr. Clark accepted this. Mr. Clark testified that although it was his view following the announcement of approval in principle that the proposal was unlikely to proceed due to the City of Burnaby's opposition, Minister Farnworth did not mention this in their conversation on December 17.

The announcement specified that the approval in principle was in respect of a charitable casino on East Hastings Street in Burnaby (the location of the North Burnaby Inn) and was subject to zoning permission from the City. Having concluded that zoning approval for the North Burnaby Inn would not be forthcoming, over the course of the next few weeks following approval in principle, Mr. Ng and Pilarinos pursued Mr. Calendino's suggestion and negotiated with Mr. Luu with respect to obtaining his property.

As is discussed further below, Minister Farnworth recalls that in mid-January 1999, he had a brief discussion with Mr. Clark in regard to the possibility of the proponents of the 545738 B.C. Ltd./North Burnaby Inn proposal moving their casino to the Halifax Street location of the other Burnaby casino proponent. Mr. Clark denies that such a discussion took place.

The negotiations between Messrs. Ng and Pilarinos and Mr. Luu concluded with the execution on January 25, 1999 of an agreement to purchase Mr. Luu's property, subject to government approval of the relocation of the 545738 B.C. Ltd./North Burnaby Inn proposal. On that same date, Mr. Ng and Pilarinos wrote to Minister Farnworth requesting permission to relocate their proposed casino to the Halifax Street site. The responsibility of drafting the Minister's response to this request was given to Mr. Mark MacKinnon, the Executive Director of the Gaming Policy Secretariat. The RFP did not include a specific direction on whether location changes would be permitted, beyond stating that the government had the right to negotiate with successful proponents (i.e. those whose proposals had received approval in principle) to make changes, amendments or modifications to their proposals.

The "Karmelita letter"

While the location change request of Messrs. Ng and Pilarinos remained outstanding, another piece of correspondence in relation to the 545738 B.C. Ltd/North Burnaby Inn proposal was received by government. On February 9, 1999, an anonymous letter was faxed to Mr. Clark's constituency office in Vancouver in which a number of allegations were made, including that Mr. Clark had broken the rules to help Mr. Pilarinos and Mr. Ng get a casino license, that Mr. Pilarinos had done free construction work for Mr. Clark, that Mr. Clark had "a piece of the action" in the casino, that a person with a criminal record was involved in the casino proposal and that Mr. Clark had been used to accommodate the entrance of "gangsters" into the casino business in B.C., and that there was a special criminal investigation targeting Mr. Clark, Mr. Ng and Mr. Pilarinos. Among other things, the letter instructed the Premier to "kill the casino application IMMEDIATELY". The letter ended with the cryptic statement "Remember the name `Karmelita` ", and I will hereafter refer to it as the "Karmelita letter".

This letter was sent by Mr. Dmitrios Vrahnos, a friend of Mr. Pilarinos, who explained that he referenced the name Karmelita only because he found it amusing and to deflect attention from himself. Mr. Vrahnos testified that over an extended period of time encompassing the preparation of the 545738 B.C. Ltd./North Burnaby Inn proposal through to the request to change locations, Mr. Pilarinos spoke to him about the proposal on many occasions. At

Mr. Pilarinos' request, Mr. Vrahnos assisted him with documentation in relation to the proposal. According to Mr. Vrahnos, during these discussions, Mr. Pilarinos repeatedly alleged that Mr. Clark was actively involved in assisting Mr. Pilarinos and his partners with their proposal. Although Mr. Vrahnos was sceptical about the truth of these claims, over time, he became extremely concerned that there might be truth to them given the government's approval in principle of Mr. Pilarinos' proposal. Mr. Vrahnos had always considered it unlikely that Mr. Pilarinos' proposal would succeed. In an effort to put a stop to whatever might be going on, Mr. Vrahnos wrote this letter to Mr. Clark. A day or two earlier, Mr. Vrahnos had written a similar anonymous letter to Mr. Pilarinos.

Mr. Vrahnos had (in September 1998 and December 1998/January 1999) also sent letters raising the allegations of impropriety to each of Gordon Campbell, the Leader of the Official Opposition, and to the *Vancouver Sun* newspaper, in an attempt to have someone look into the matter. As a result of these letters, Mr. Vrahnos had been interviewed by the RCMP, and he wished to warn Mr. Pilarinos and Mr. Clark about the ongoing criminal investigation.

The Karmelita letter was faxed from Mr. Clark's constituency office to the Premier's office in Victoria the next day, and provided to Mr. Adrian Dix, Mr. Clark's Principal Secretary, when he returned to the office at the end of the day following a caucus meeting held on the campus of Royal Roads. Mr. Dix, who shared housing in Victoria with Mr. Clark, brought the letter home later that night and showed it to Mr. Clark. Mr. Clark and Mr. Dix decided that they would share the letter with Mr. George Ford, who had recently assumed the position of Deputy Minister to the Premier.

Mr. Dix and Mr. Clark met with Mr. Ford the next morning (February 11, 1999), as soon as Mr. Ford arrived in the office. They provided Mr. Ford with a copy of the Karmelita letter and discussed its contents with him. Mr. Clark told Mr. Ford that he had no involvement with Mr. Pilarinos in respect of his casino proposal, but confirmed that Mr. Pilarinos, who was a family friend, had done some construction work for him for which he would not accept payment. Mr. Clark also told Mr. Ford that he had advised Mr. Dix as soon as he became aware of Mr. Pilarinos' application and asked him to take all necessary steps to ensure he had no involvement with it. Mr. Dix confirmed this for Mr. Ford, saying he had advised Minister

Farnworth of the need for the Premier to remain uninvolved, and indicated that he thought he might have prepared a memorandum to file in this regard. Mr. Dix did not show the memorandum to either Mr. Ford or Mr. Clark at this time.

Mr. Ford recalls that either Mr. Dix or Mr. Clark also provided him with information with respect to the RFP process, including the fact that a decision was outstanding with respect to the request of Messrs. Ng and Pilarinos that they be permitted to move their proposed casino to a different site. Either Mr. Clark or Mr. Dix explained that there were two proposals for Burnaby, one on Halifax Street and one at the North Burnaby Inn, both of which were weak, that the Halifax Street location had zoning approval and the North Burnaby Inn location did not and was unlikely to obtain it, that the local M.L.A., Pietro Calendino, had telephoned the Halifax Street proponent and suggested he consider a partnership with the North Burnaby Inn proponents, and that this had lead to the North Burnaby Inn proponents securing an option to purchase the Halifax Street location.

Mr. Dix testified that he did not tell Mr. Ford that Mr. Calendino had approached the Burnaby applicants about working together or that the North Burnaby Inn proponents had negotiated an option to purchase the Halifax Street site as he was not aware of these facts at the time. Mr. Dix further stated that he did not recall Mr. Clark saying these things either. However, the communication of this information is corroborated by contemporaneous notes taken by Mr. Ford.

Mr. Clark's evidence is that he asked Mr. Ford to assess and review the process in respect of the 545738 B.C. Ltd./North Burnaby Inn proposal and make sure that it was handled appropriately and above reproach. Mr. Ford recalls that Mr. Clark asked him to do whatever he felt necessary to follow up on the Karmelita letter.

Mr. Ford's first response was to familiarize himself with the RFP process. He called for news clippings, as well as for the Cabinet records relating to gaming. He also arranged to meet with Mr. Mark MacKinnon that same day in order to obtain an overall briefing about the RFP process generally, as well as the location change request made by the 545738 B.C. Ltd./ North

Burnaby Inn proponents. Mr. Ford did not reveal to Mr. MacKinnon the reason for his interest in the RFP process beyond stating that there had been some kind of anonymous tip.

Mr. Ford also consulted Ms. Maureen Maloney, the Deputy Attorney General about his options. He told her that he had information about one of the proponents in the RFP process, although he did not provide any specifics, and sought her advice as to whether and how this information might be provided to GAIO. Mr. Ford also inquired about the process for appointment of special prosecutors, as he was considering whether he ought to provide the Karmelita letter to the Assistant Deputy Attorney General, who has responsibility for the appointment of special prosecutors.

During this period, Mr. MacKinnon sought legal advice from counsel within the Ministry of Attorney General with respect to whether it would be appropriate to grant the requested location change.

Although Minister Farnworth was unaware of the Karmelita letter, he learned that Mr. Ford was reviewing the RFP process. He contacted Mr. Ford on February 15 or 16, 1999 and asked for his thoughts on how he ought to respond to the proponents' request to change locations. According to Mr. Ford's recollection, he advised the Minister that he did not yet feel he had sufficient knowledge to provide advice, but that he would meet again with Mr. MacKinnon to discuss the matter in order to be in a position to provide the Minister with a recommendation.

On February 16, 1999, Mr. Ford met again with Mr. MacKinnon, this time discussing exclusively what the appropriate response to the location change request might be. Mr. MacKinnon explained that there were two main precedents with respect to other requests by proponents to change locations, one of which was allowed and one of which was not. They reviewed the particular circumstances of the 545738 B.C. Ltd./North Burnaby Inn proposal and Mr. MacKinnon's ultimate recommendation was that the request not be granted. Mr. Ford asked Mr. MacKinnon to provide him with a draft letter for the Minister's signature denying the proponents' request.

On February 17, 1999, Mr. MacKinnon provided Mr. Ford with a draft letter from the Minister to Messrs. Ng and Pilarinos denying their request to change locations and Mr. Ford reviewed it with Minister Farnworth. Some minor changes were made, and the letter was signed by Minister Farnworth later that day.

On February 18, 1999, Mr. Clark asked Mr. Ford what he had done to follow up on the anonymous letter. Mr. Ford reviewed the steps he had taken, other than his consultation with Ms. Maloney. He advised Mr. Clark that Mr. MacKinnon's recommendation had been that the location change request be rejected and that Minister Farnworth had sent a letter to that effect. Mr. Ford also advised Mr. Clark that he had considered referring the matter to the Assistant Deputy Attorney General but that he had decided not to as there was, in his view, really nothing to be followed up on given that GAIO was conducting its own investigation.

Just under two weeks later, on March 2, 1999, the RCMP executed search warrants in relation to their investigation of this matter.

On April 28, 1999, GAIO denied registration to 545738 B.C. Ltd. and its principals.

V. ANALYSIS

As noted at the outset, my mandate was to consider whether Mr. Clark was in breach of any of the sections of the Act in this matter. The circumstances of this case require consideration of three provisions of the Act: Conflict of Interest (s.3) , Influence (s.5) and Accepting Extra Benefits (s.7). The resulting questions to be asked are as follows:

> Did Mr. Clark exercise an official power or perform an official duty or function when he had a conflict of interest or apparent conflict of interest? (s.3)
>
> Did Mr. Clark use his office to seek to influence a decision, to be made by another person, to further his private interest? (s.5)

Did Mr. Clark accept a fee, gift or personal benefit that was connected directly or indirectly with the performance of his duties of office? (s.7)

Although each of these questions reflects an independent prohibition under the Act, as will be seen below, there is some overlap in my analysis of them.

The standard of proof to be applied in a proceeding of this kind is less onerous than the proof beyond a reasonable doubt required in a criminal proceeding. In administrative hearings involving the discipline of a professional, "a fair and reasonable preponderance of credible evidence" or "clear and convincing evidence" has been required. Bodies regulating non-professionals may be required to apply a lesser version of the civil standard of proof on the balance of probabilities. The totality of the circumstances, including the seriousness of the allegations and the gravity of the consequences for the individual against whom they are made, are relevant to the appropriate standard of proof. Although the decisions to be made in this proceeding under the *Members' Conflict of Interest Act* are not wholly equivalent to those made by professional disciplinary bodies, I am satisfied that it is appropriate that findings against Mr. Clark be established on clear and convincing evidence.

A. Conflict of interest

Section 3 of the *Members' Conflict of Interest Act* provides as follows:

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Conflict of interest and apparent conflict of interest are defined in section 2 of the Act as follows:

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the

performance of the duty or function or in the exercise or the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

There are two key elements for a violation of the conflict of interest prohibition under the Act, whether due to an actual or apparent conflict. They are:

1) the exercise of an official power or performance of an official duty or function, and

2) the existence of a private interest on the member's part.

I find it helpful to consider the latter point first.

1. Did Mr. Clark have a private interest?

In previous opinions I and my predecessor, Commissioner Hughes, have concluded that a private interest within the meaning of the Act includes any real or tangible benefit that inures to the personal benefit of the member, whether pecuniary or not.[2] This is a broad and flexible definition. Whether or not a private interest arises in any given case is dependent upon all of the circumstances surrounding the member's position and the benefit received. No absolute rules may be drawn; what amounts to a private interest in one situation may not in another.

Analysis of whether Mr. Clark had such an interest in this case requires further consideration of the evidence.

a. Did Mr. Clark have a financial interest in the 545738 B.C. Ltd./North Burnaby proposal?

The most straightforward sense in which Mr. Clark might have had a private interest in the casino proposal is easily dispensed with. The only evidence I received in this regard was that of Mr. Dmitrios Vrahnos, Mr. Pilarinos' friend, who testified that Mr. Pilarinos had told him that Mr. Clark had been offered an interest in the casino contemplated by the 545738 B.C. Ltd./North Burnaby Inn proposal but had declined this offer. Mr. Vrahnos also testified that Mr. Pilarinos had told him that he would provide financial support to the NDP or to Mr. Clark's political campaign if his casino proposal was successful. Mr. Vrahnos took care to emphasize that he had no idea whether these, and many other statements made to him by Mr. Pilarinos, were true.

Both Mr. Clark and Mr. Pilarinos denied that such offers were made and I received no other evidence to the contrary.

I am satisfied that there is no basis on which conclude that Mr. Clark had a direct or indirect financial interest in the casino proposed by Mr. Pilarinos and his partner.

b. Did the unpaid construction work carried out by Mr. Pilarinos give rise to a "private interest"?

A benefit is capable of giving rise to a private interest within the meaning of the Act whether it is received by the member before, after or contemporaneously with the member's exercise of his or her official, powers duties or functions.[3] Whether past, prospective or merely potential, the question is whether there is a personal benefit for the member in relation to an individual or matter in respect of which he or she is discharging official responsibilities.

I turn first to the work done on Mr. Clark's home in Vancouver.

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[2] Opinion of the Conflict of Interest Commissioner dated August 16, 1993 re: Blencoe; Opinion of the Conflict of Interest Commissioner dated June 3, 1998 re: McGregor, Evans and Clark

[3] Opinion of the Conflict of Interest Commissioner dated August 16, 1993 re: Blencoe

I do not consider a concluded agreement between Mr. Clark and Mr. Pilarinos linking Mr. Pilarinos' construction work with assistance in respect of Mr. Pilarinos' casino proposal to be a prerequisite for a finding that Mr. Clark had a private interest within the meaning of the Act. That goes well beyond the appropriate threshold.

In this case, the fact that Mr. Clark may have had the intention at the outset of paying Mr. Pilarinos in full for his work does not end the matter. Whatever Mr. Clark's intention, Mr. Pilarinos' provision of construction services for Mr. Clark created a situation in which Mr. Pilarinos was in a position to grant a benefit to Mr. Clark either by charging a reduced amount for the work or by refusing to accept payment altogether. This potential benefit remained up until the question of payment was finally confronted in August 1998. Whether or not Mr. Pilarinos would be motivated to grant such a benefit, or whether Mr. Clark would actively seek such a benefit or accept it if offered, their ongoing dealings in respect of the renovation work raised such possibilities and therefore gave rise to a private interest on Mr. Clark's part within the meaning of the Act.

Of course, as events transpired, in August 1998, Mr. Pilarinos did in fact refuse to accept payment from the Clarks for the bulk of his own efforts. Mr. Pilarinos' evidence is that the Clarks' attempted to give him a $9,000 cheque by way of final payment, which, given that there were only approximately $3,000 outstanding in expenses, would have included approximately $6,000 for Mr. Pilarinos' services. The Clarks' evidence is that the cheque was for $5,000, suggesting that they considered Mr. Pilarinos' own services to be worth approximately $2,000.

There is thus a conflict in the evidence with respect to the amount the Clarks attempted to pay Mr. Pilarinos in compensation. As the cheque was ripped up, this conflict cannot be resolved by documentary evidence. In any event, it was not suggested to me that the Clarks had any expertise which would enable them to accurately value Mr. Pilarinos' work. Mr. Pilarinos suggested that his work might be valued somewhere between $2,000 and $4,000, but he testified that he was not at all confident of these figures.

Another possible frame of reference arises from the expert valuations. The reports obtained by the special prosecutor suggest a total value for the project ranging from $23,000 -

25,000, including the costs of labour and materials. An expert retained by Mr. Clark's counsel has provided valuations ranging between $10,500 and $15,000, pointing out, among other things, that the valuations prepared for the Crown include items which did not form part of the project overseen by Mr. Pilarinos. However, I note that the lower end of this range is less than the amount actually paid by the Clarks for the project. The documents provided to me from the Clarks' own records evidence a total of approximately $15,500 paid by them.

Given that the key question is the value of the services provided by Mr. Pilarinos, I find these reports useful only to the extent that they provide some guidance with respect to the overall scale of the project and to the amounts generally charged by a general contractor for his services. All of the experts indicate that a mark-up of 15% for a general contractor's overhead and profit is appropriate.

The evidence before me is that Mr. Pilarinos' work on the Clarks' renovation involved a considerable effort over an extended period of time in both overseeing a project of a value in the range of $10,000 to $20,000, as well as in carrying out framing and fibreglass work. The figures given in the expert valuations for the amount chargeable by a general contractor for overhead and profit on this project range from approximately $1,200 to $3,000. This does not include the value of Mr. Pilarinos' labour for the framing and fibreglass work.

I do not consider it necessary to inquire further into the precise quantum of the value of the work done by Mr. Pilarinos. It is my conclusion that the benefit granted to the Clarks through this free work was of sufficient significance to be caught by the Act.

The fact that one expert values the project at less than the Clarks paid suggests only that it may have been possible to hire tradesmen and purchase materials at better rates than those arranged by Mr. Pilarinos. It does not alter the fact that Mr. Pilarinos did not receive compensation for his own time and efforts in providing both general contracting services and labour.

I am not prepared to conclude that the carved hunting knife which Mr. Clark gave to Mr. Pilarinos somehow displaced the benefit received from Mr. Pilarinos' unpaid work. There

was no evidence put before me to indicate that the knife had any significant monetary value. Furthermore, it is my view that a gift such as this would not have been presented as being equal in value to the work done as a form of payment in kind, but rather as a token of appreciation. In fact, it was Mr. Clark's evidence that he obtained this gift for Mr. Pilarinos to show his appreciation.

It seems to me a matter of common sense that Mr. Pilarinos provided a benefit to Mr. Clark which was of a sufficient magnitude to support a conclusion that Mr. Clark had a private interest within the meaning of the Act. Receipt of such a benefit left Mr. Clark, albeit perhaps unwillingly, indebted to Mr. Pilarinos and meant that he might properly be considered to have an interest in seeing Mr. Pilarinos compensated in some way.

In making this finding, I consider the close proximity in time between the benefit granted by Mr. Pilarinos and his dealings with government to be a relevant factor. The work was carried out in June and July of 1998. By at least August 1998, Mr. Clark became aware of the benefit Mr. Pilarinos was insisting upon providing him. Mr. Pilarinos' casino proposal was evaluated in early 1998, was under consideration by the Minister in the summer and fall of 1998, and received approval in principle in December 1998. Although a past benefit can constitute a private interest, I am influenced in the circumstances of this case by the fact that the benefit granted by Mr. Pilarinos was not some long past favour but occurred during the very period of time when his proposal was under consideration by government. Mr. Clark's efforts to respond to Mr. Pilarinos' generosity by obtaining a special gift for him carried over to February 1999, suggesting that this remained a live issue between them beyond the summer of 1998.

I emphasize that a finding that a private interest existed is not itself a violation of the Act, nor does it reflect a finding of an agreement for an exchange of favours. The point is simply that Mr. Clark had personal dealings with Mr. Pilarinos which gave him an interest vis a vis Mr. Pilarinos different from those attendant upon his public office. Mr. Pilarinos was not merely an applicant in the RFP process for Mr. Clark. Prior to August 1998, he was a neighbourhood friend who was providing Mr. Clark with valuable services, the price for which remained to be settled. As of August 1998, Mr. Pilarinos had bestowed on Mr. Clark a benefit which had a more than trifling monetary value.

These circumstances placed Mr. Clark in a position of obligation to Mr. Pilarinos. Whether or not Mr. Clark was motivated to use his office to obtain a more favourable financial arrangement with Mr. Pilarinos, or later on, to repay the debt owed to Mr. Pilarinos -- and it is his evidence he was not -- the facts placed him in a position where the possibility of doing so existed. It is for this reason that a private interest arises. With the greatest of respect to those who have held different views, I do not think that the motive of the member is determinative with respect to when a private interest, or a conflict of interest for that matter, arises under the Act. It is the member being situated in a position where he or she has a private interest that might be furthered that engages the conflict of interest provisions of the Act, and requires him or her to refrain from exercising his or her official powers, duties or functions. The member's motive to further his or her own private interest, or lack thereof, is not relevant to the question of whether a conflict of interest existed, although the absence of such a motive may well be a mitigating factor in determining the appropriate consequence for one who inadvertently acts in a situation of conflict of interest.

In this case, Mr. Clark himself stated that had the 545738 B.C. Ltd./North Burnaby Inn proposal come forward for decision at a Cabinet meeting where he was present, he would have indicated that he had a conflict of interest and withdrawn from the discussion. These are the requirements of s.10 of the Act. I take this statement on the part of Mr. Clark as an indication of his instinctive recognition that the circumstances of his situation vis a vis Mr. Pilarinos constituted a private interest capable of giving rise to at least an apparent conflict of interest under the Act.

I do not reach the same conclusion in regard to the existence of a private interest with respect to the assistance Mr. Pilarinos provided to Mr. Clark when he rebuilt the deck on his cottage in the Okanagan. The evidence revealed this work to be of a minor nature, taking less than three days of an extended stay at the Clarks' cottage by the Pilarinos family. This scenario of providing a helping hand to one who is extending hospitality is one with which many of us will be familiar. The fact that Mr. Pilarinos' help was prearranged, that he went to the cabin with the intention of helping out and contributed some free lumber that he had obtained and the use of some of his tools, does not change its essential character. I feel I am entitled to exercise my

discretion to, once again, apply some common sense in concluding that this work does not represent the kind of benefit contemplated under the Act.

c. Did Mr. Clark's relationship with Mr. Pilarinos itself give rise to a "private interest"?

In his decision in the Blencoe case, my predecessor, Commissioner Hughes pointed out that the private interests of other persons, such as family members, close personal friends and business associates, might, in some circumstances, be considered to give rise to a private interest on the part of a member. The test is whether it is reasonable to assume that the member would benefit directly or indirectly from the benefit to the third party.[4]

This raises the question as to whether the prospect of Mr. Pilarinos obtaining government permission to operate a casino is itself capable of constituting a private interest for Mr. Clark, even without the additional factor of the construction work provided by Mr. Pilarinos, merely by virtue of his friendship with Mr. Clark. As Mr. Pilarinos was a constituent of Mr. Clark, in considering this point, it is important to keep in mind that s. 6 of the Act specifies that it "does not prohibit the activities in which members normally engage on behalf of constituents".

I have earlier rejected the suggestion that Mr. Clark stood to gain any direct financial benefit from Mr. Pilarinos' operation of a casino. Putting aside the construction work, which I have addressed above, the benefit to Mr. Clark can only therefore be in the realm of the non-pecuniary. Was Mr. Clark's relationship with Mr. Pilarinos such that it is reasonable to assume that Mr. Clark would obtain some real or tangible, if non-pecuniary, benefit from approval of Mr. Pilarinos' casino proposal?

The evidence established that the relationship between Mr. Clark and Mr. Pilarinos existed in the context of the friendship between their children and wives. Mr. Clark expressed his view that outside of their families' activities, he had little in common with Mr. Pilarinos in terms of interests or background to support an independent friendship. An additional factor is

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[4] Opinion of the Conflict of Interest Commissioner dated August 16, 1993 re: Blencoe at 31

that the two men had known each other for a number of years by the time of Mr. Pilarinos' casino proposal.

At the same time, I note that Mr. Vrahnos' evidence included an account of statements made to him by Mr. Pilarinos to the effect that Mr. Clark took an interest in Mr. Pilarinos' prospects to the point of specifically suggesting that Mr. Pilarinos apply for a casino license.

I do not know whether Mr. Pilarinos made such statements, or if made, whether they were true. Furthermore, Mr. Pilarinos' position as a constituent of Mr. Clark may protect this kind of advice.

In light of my conclusion that Mr. Clark did have a private interest within the meaning of the Act due to the construction work done on his home in Vancouver by Mr. Pilarinos, it is unnecessary for me to decide whether Mr. Clark's relationship with Mr. Pilarinos in and of itself gives rise to a private interest. To my mind, it is not inconceivable that a relationship such as existed between Mr. Clark and Pilarinos could, in some circumstances, give rise to a private interest.

I have raised this issue here only for the benefit of members who must constantly be alive to where their conduct might be seen to run afoul of the Act. The challenge in dealing appropriately with the intersection between personal relationships and public duties for those who enter public life should not be underestimated. My practice in my tenure as Conflict of Interest Commissioner has always been to encourage members to approach me for advice on these difficult questions. I use this opportunity merely to remind members, and interested members of the public, that situations in which a member's personal friends have dealings with government must be approached with extreme care.

d. Did Mr. Clark have a "private interest" as a result of the Karmelita letter?

Receipt of a benefit is not the only way in which a private interest on the part of a member may arise under the Act. Matters which otherwise affect a member in his or her personal capacity may also give rise to a private interest.

The Karmelita letter alleged that Mr. Clark "broke the rules" to help Messrs. Pilarinos and Ng get a casino license, that there was a rumour Mr. Clark had a "piece of the action" in the casino, that a person with a criminal record was involved in the casino proposal and that Mr. Clark was therefore implicated in allowing "gangsters" to enter into the casino business in B.C., that the "story" was out and, in particular, was known to the Liberal opposition, and that there was an ongoing special criminal investigation in relation to the matter. The letter also disclosed that its author was aware of Mr. Clark's friendship with Mr. Pilarinos and that Mr. Pilarinos had done free construction work for Mr. Clark. To "save your reputation and your government", the letter advised Mr. Clark to "kill the casino application".

I heard from many witnesses that gaming was a sensitive issue for the government and that the selection of proposals in the RFP process entailed some weighing of political considerations. The effect of the Karmelita letter, however, was to reveal allegations which had serious implications for Mr. Clark personally.

The direction in the Karmelita letter that Mr. Pilarinos' casino application be "killed" in order to "save Mr. Clark's reputation" might be seen to suggest that the allegations would not come to light if the casino did not proceed. Even more significantly, a decision by government which prevented the casino from proceeding would assist in refuting the allegation that Mr. Clark had improperly intervened to see that Mr. Pilarinos was granted permission to operate a casino.

Whether or not the casino would proceed remained an open question at the time the letter was received. The 545738 B.C. Ltd./North Burnaby Inn proposal had received approval in principle a month and a half earlier. However, a number of further steps were required before final approval, including resolution of the problem arising from the lack of appropriate zoning at the proposed location. At the time Mr. Clark received the letter, the proposal of Messrs. Ng and Pilarinos that this problem be resolved by allowing them to relocate their proposed casino to Mr. Luu's appropriately zoned property was before government for decision, having been received two weeks earlier.

Mr. Ford discussed the Karmelita letter with Mr. Clark and Mr. Dix when they presented it to him the morning after it was received. Although he was not certain, Mr. Ford thought that during the course of the discussion the suggestion may have been made that it would be good if the application was killed. Mr. Clark does not specifically recall such a statement, but conceded it was probable that this thought occurred to him and that he made some statement to that effect when discussing the matter with Mr. Ford. Mr. Dix, for his part, does not recall Mr. Clark making any such statement in their discussion with Mr. Ford. However, Mr. Dix testified that he subsequently told both Mr. Ford and Mr. Clark that it was his view that the 545738 B.C. Ltd./North Burnaby Inn proponents should not be allowed to change locations.

To my mind, regardless of what may have been acknowledged out loud during Mr. Clark's discussion of the letter with members of his staff, the serious allegations made against him, which included the suggestion that Mr. Clark was himself the target of a special criminal investigation, gave rise to an interest on Mr. Clark's part different from what would be the case in the ordinary discharge of his office as Premier. Whatever Mr. Clark's own motive or reaction to the letter, examining the matter objectively leads me to the conclusion that there was a possible advantage to Mr. Clark in having the proposal fail.

I am not persuaded by arguments on Mr. Clark's behalf that the potential benefits to Mr. Clark if Mr. Pilarinos' casino did not proceed were too speculative or remote to constitute a private interest. That a rejection of the proponents' request for a location change would not guarantee that the allegations against Mr. Clark did not come to light, as was argued, does not alter my view that, following receipt of the Karmelita letter, Mr. Clark stood to benefit from a decision that would prevent the proposal from proceeding. If the proposal did not proceed, the chance of questions being asked about it would be reduced. Furthermore, the fact of its rejection by government would be available to corroborate Mr. Clark's denials of any improper intervention on his part in favour of his friend's proposal. Although it was also argued that efforts on Mr. Clark's part to bring about such a rejection might be uncovered, and that this would nullify any benefit available to him, to my mind, this possibility merely suggests that if Mr. Clark decided to pursue this objective, care had to be taken in how this was done.

There is, of course, no implication of impropriety in my finding that the Karmelita letter gave rise to a private interest for Mr. Clark in relation to the 545738 B.C. Ltd./North Burnaby Inn proposal. The existence of such a private interest meant only that to avoid any actual or apparent conflict of interest, Mr. Clark had to refrain from involving himself in any exercise of official power, duty or function in relation to the matter. Once again, finding oneself in a position where one has a potential conflict does not run afoul of the Act. It is exercising authority while in such a position that gives rise to the problem.

2. Did Mr. Clark "exercise an official power or perform an official duty or function"?

Having concluded that each of the construction work and the Karmelita letter gave rise to a private interest on Mr. Clark's part, it is necessary to consider this question.

For the purposes of this analysis, it seems to me that there is a useful distinction to be drawn between official duties or functions -- where a member is required to act -- and official powers -- where a member has the ability to act but is not required to do so.

a. Did Mr. Clark "perform an official duty or function" in respect of the 545738 B.C. Ltd./North Burnaby Inn proposal?

Like all other proposals submitted in the RFP process, the 545738 B.C. Ltd./North Burnaby Inn proposal was evaluated in accordance with the process developed under the auspices of the Lotteries Advisory Committee (later the Gaming Policy Secretariat) with the assistance of a private consulting firm. The evaluations were carried out by government personnel involved in the administration of gaming in the Province and by independent consultants. The material presented to the Minister, and later to Cabinet, in respect of the proposal reflected the results of the evaluation and was prepared by staff of the Gaming Policy Secretariat. The evaluation process itself did not include any duty or function to be exercised by the Premier or his staff prior to consideration of the proposals by Cabinet.

Under the RFP process, however, the selection of successful proposals following their evaluation was to be decided by Cabinet. As a member of Cabinet, Mr. Clark had an official duty or function to perform in respect of any decision to be made by Cabinet and, as chairman of Cabinet, he had responsibility for determining which items would be placed on the Cabinet agenda.

As a result of the latter role, Mr. Clark had involvement with the 545738 B.C. Ltd./North Burnaby Inn proposal to the extent that he endorsed Minister Farnworth's intention to bring the outstanding proposals, of which the 545738 B.C. Ltd./North Burnaby Inn proposal was one, before an upcoming Cabinet meeting in July 1998. Although there is evidence that there was some reference to the 545738 B.C. Ltd./North Burnaby Inn proposal in this discussion between Mr. Clark and the Minister, as is reviewed in my analysis of s.5 of the Act (Influence) below, I do not consider Mr. Clark's involvement in mere discussion to represent the exercise of an official duty or function within the meaning of the Act.

At the subsequent Cabinet meeting, which was attended by Mr. Clark, the 545738 B.C. Ltd./North Burnaby Inn proposal was amongst those proposals for which the approval in principle decision was deferred to a later date, following further consideration by Minister Farnworth. According to Minister Farnworth, Cabinet directed that he assume responsibility for determining which proposals would receive approval in principle. Mr. Clark may therefore be said to have exercised an official duty or function in respect of the 545738 B.C. Ltd./North Burnaby Inn proposal to the extent of participating in the delegation of decision-making authority to Minister Farnworth. It should be noted, however, that Mr. Clark's surprise on the date of Minister Farnworth's announcement of the final group of proposals to receive approval in principle, including Mr. Pilarinos' proposal, suggests he was under the impression that decision-making authority remained with Cabinet. Under this scenario, the delegation to Minister Farnworth was limited to authority to further consider the proposals prior to returning to Cabinet with a recommendation.

It may be argued that the fact that Minister Farnworth was the only other member of Cabinet who was aware of Mr. Clark's relationship with Mr. Pilarinos lends some significance to Mr. Clark's role in the Cabinet decision to grant Minister Farnworth any decision-making

authority in respect of the 545738 B.C. Ltd./North Burnaby Inn proposal. Nonetheless, in the absence of any substantive discussion of this proposal at Cabinet, I consider Mr. Clark's role in the transfer of authority to Minister Farnworth to be too remote from any decision in respect of the proposal to constitute the exercise of an official duty of function within the meaning of the Act.

In accordance with Minister Farnworth's understanding of the authority delegated to him, the decision to grant approval in principle to the 545738 B.C. Ltd./North Burnaby Inn proposal announced on December 17, 1998 was made by Minister Farnworth.

The only other substantive decision-making made in respect of the proposal was in regard to the request of Mr. Pilarinos and Ng for permission to modify their proposal to change locations. This request was made to Minister Farnworth. The decision to reject this request was made by Minister Farnworth and communicated to the proponents by a letter under his signature, albeit on the recommendation of members of the civil service, namely Mr. Ford and Mr. MacKinnon. The Premier had no official role in this decision-making process.

In light of the foregoing, I am satisfied that Mr. Clark exercised no official duty or function in relation to the 545738 B.C. Ltd./North Burnaby Inn proposal.

b. Did Mr. Clark "exercise an official power" in respect of the 545738 B.C. Ltd./North Burnaby Inn proposal?

Consideration of official powers, as distinct from official duties or functions, is particularly important in relation to a person holding the office of the Premier. As head of government, the Premier's range of authority is not restricted to any particular portfolio. The Premier, unlike many other Members of the Legislative Assembly, has jurisdiction to play a role in matters within the mandate of others. It is conceivable that the Premier may exercise a power which has the effect of bringing about a certain outcome even in the absence of an official duty or function. However, this is limited to acts which constitute the exercise of power by the Premier in his or her own official capacity. Conflict of interest arising from efforts to influence

the official decision of another person are dealt with elsewhere under the Act (see the discussion of s.5 "Influence", below).

Mr. Clark's evidence is that he alerted both Mr. Dix and Minister Farnworth to his relationship with Mr. Pilarinos so that they could ensure he played no role in the decision-making in regard to this proposal. The record before me on this point includes the memorandum prepared by Mr. Dix that was attached to the public statement issued by Mr. Clark the day after the execution of the search warrant on his home by the RCMP. Because the memorandum was produced by Mr. Clark in order to refute the suggestion that he had acted improperly, I received evidence of both the events referred to in it and the circumstances of its preparation.

Mr. Dix' evidence is that, notwithstanding the date and date stamp appearing on it, he prepared the memorandum months after the events recorded in it took place.

Given these circumstances, and the availability of direct evidence with respect to the events recorded in it, I place no weight on the existence of this document. I am prepared to accept that Mr. Clark told Mr. Farnworth in February and Mr. Dix in July that he did not want to be involved in the decision-making process in regard to Mr. Pilarinos' proposal. Further, Mr. Dix and Minister Farnworth have each verified that Mr. Dix raised this issue with Minister Farnworth in July, although Minister Farnworth was already aware of it.

Since the evidence is that Mr. Dix prepared the memorandum at his own behest, and that Mr. Clark was not made aware that the memorandum had been back-dated by Mr. Dix until some time after it had been made public, I make no finding with respect to Mr. Dix' account of the timing or circumstances of its preparation.

There is no evidence that Mr. Clark or anyone acting on his behalf attempted to exercise any power available to the Premier to intervene in the RFP evaluation process conducted under the auspices of the Lotteries Advisory Committee/Gaming Policy Secretariat.

As is discussed further below, there is evidence that the 545738 B.C. Ltd./North Burnaby Inn proposal was referred to in discussions between Mr. Clark and the Minister responsible for

the RFP process, the Honourable Michael Farnworth. I have considered whether the act of discussing the proposal with the Minister might be said to represent the exercise of an official power by Mr. Clark. I have concluded that it cannot. Although Mr. Clark certainly had the opportunity to discuss the matter with Minister Farnworth by virtue of his office as Premier, I do not consider that mere discussion of the proposal, which falls short of an instruction by the Premier as to what the Minister's decision should be, represents the exercise of an official power within the meaning of the Act. As there is no evidence to suggest that such an instruction was given, these discussions are properly considered under s.5 of the Act, which prohibits the use of one's office to seek to influence a decision to be made by another person, as discussed below.

The evidence of Mr. Dmitri Vrahnos provides some suggestion of affirmative steps taken by Mr. Clark at the Cabinet level. Mr. Vrahnos testified that Mr. Pilarinos reported to him that Mr. Clark had provided various forms of assistance such as reviewing his casino proposal prior to its submission, and developing a strategy to ensure its approval notwithstanding the low score it had received in the evaluation process. According to Mr. Vrahnos, Mr. Pilarinos said that Mr. Clark had advised him that as the only other competing casino proposal in Burnaby had received an even lower score, Mr. Clark would arrange for Mr. Pilarinos' proposal to be approved by Cabinet on the basis that it was the better option of the two.

Another significant allegation arising from Mr. Vrahnos' evidence is that Mr. Pilarinos told him that following approval in principle, he discussed with Mr. Clark the location problem arising from the City of Burnaby's opposition to the location of a casino at the North Burnaby Inn and Mr. Clark assured him that he would see that Cabinet agreed to allow the proponents to change their proposed location.

Whether or not these statements were made by Mr. Pilarinos, the record is clear that Mr. Pilarinos' proposal never came before Cabinet for decision. This evidence does not therefore support a finding that Mr. Clark exercised an official power to orchestrate a favourable decision by Cabinet, as suggested.

Although other references to Mr. Clark by Mr. Pilarinos appear in the intercepted communications and in correspondence with Mr. Ng (as is reviewed in s.5 below), none of these

point to an independent exercise of power by Mr. Clark to advance the 545738 B.C. Ltd./North Burnaby Inn proposal.

This is an appropriate point at which to note that I have found nothing nefarious in the manner in which the proposed solution to Messrs. Ng and Pilarinos' location problem came about. The evidence establishes that the idea of Messrs. Ng and Pilarinos obtaining rights to the property of the competing applicant in Burnaby, Mr. Derek Luu, was initiated by Pietro Calendino, the M.L.A. for Burnaby North following a discussion with Minister Farnworth. I find that Mr. Calendino acted in good faith, as he endeavoured to find a solution to opposition in his riding to the location of a casino at the North Burnaby Inn and to assist Mr. Luu, a constituent who had sought his help, to gain some benefit from the RFP process if his own proposal was not selected. I am satisfied that Mr. Calendino's role in initiating the negotiations between Messrs. Ng and Pilarinos and Mr. Luu for rights to Mr. Luu's property did not reflect the exercise of any power by Mr. Clark or any other impropriety of any kind.

The last area of evidence which must be considered in relation to the question of whether Mr. Clark exercised an official power relates to the steps he took following his receipt of the Karmelita letter. In consultation with Mr. Dix, Mr. Clark showed the letter to Mr. George Ford, Mr. Clark's Deputy Minister, and discussed its contents with him. More than that, however, Mr. Clark asked Mr. Ford to follow up on the letter. Mr. Clark's recollection is that he asked Mr. Ford to review the process in respect of the 545738 B.C. Ltd./North Burnaby Inn proposal and to ensure that it was handled appropriately. Mr. Ford recalls, as confirmed by his notes, that the information provided to him by Mr. Clark and/or Mr. Dix included the fact that a decision was outstanding as to whether Mr. Pilarinos and his partner ought to be permitted to change the location of their proposed casino.

Giving this assignment to his Deputy Minister is a step which Mr. Clark was entitled to make by virtue of his role as Premier. In that sense, it seems to me that charging Mr. Ford with the task of acting upon the Karmelita letter sent to Mr. Clark represented the exercise of an official power on Mr. Clark's part. The appropriateness of this characterization of Mr. Clark's conduct was conceded by Mr. Clark's counsel.

In light of this conclusion, I must turn to the additional elements which make up a conflict of interest under the Act.

3. Did Mr. Clark's direction to Mr. Ford give rise to "an apparent conflict of interest"?

For an apparent conflict of interest, the question is whether the member exercised a power or performed an official duty or function when there was a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise a power, duty or function must have been affected by his private interest. The potential for an appearance of conflict arises whenever there is a reasonable perception that a member is in a position to further his or her private interest through the exercise of an official power, duty or function, i.e. that he or she has the "ability" to do so. However, there is only a violation of the Act if the member actually exercises an official power or performs an official duty or function when he or she appears to be in a position to further his or her private interest.

Mr. Clark's counsel argued that the wording of the Act requires two independent exercises of power for a violation of s.3: one exercise of power to give rise to an apparent conflict of interest, and a second exercise of power to run afoul of the conflict of interest prohibition. With respect, I cannot agree with this literal interpretation of the admittedly somewhat awkward wording of the Act. The definition of apparent conflict of interest requires a reasonable perception that the member's ability to exercise an official power must have been affected by his or her private interest. The conflict of interest prohibition is violated only when the member acts on this ability to exercise an official power. Only one exercise of power is required.

Applying the language of the statute to the issue at hand, the question is whether a reasonably well informed person could reasonably perceive that in sending his Deputy Minister in to review the decision-making process in respect of Mr. Pilarinos' proposal, after having showed him serious allegations of impropriety in relation to this proposal which could be damaging to Mr. Clark both personally and politically, in circumstances where the damage to

Mr. Clark might be avoided if the proposal did not proceed, Mr. Clark was affected by his private interest in having the proposal brought to an end? I think that the answer is yes.

I have concluded above in finding that the Karmelita letter gave rise to a private interest for Mr. Clark that if Mr. Pilarinos' proposal did not proceed, the allegations in the letter might not come to light, or, if they did, the failure of the proposal would assist in refuting the allegation that Mr. Clark had somehow intervened to see that it would proceed.

I cannot say that it is unreasonable to perceive that Mr. Clark's decision to share the Karmelita letter with Mr. Ford and then to assign him to review the government's consideration of the proposal, even without express instructions to Mr. Ford to effect any particular outcome, was motivated by the possibility that Mr. Ford might be able to engineer a justifiable end to the proposal. As set out below, I have accepted Mr. Clark's assertion that he was not in fact so motivated. However, apparent conflict of interest turns on the perceptions of a reasonably well informed observer, not the actual motivations of the member involved.

In prohibiting official acts by a member in situations of apparent conflict of interest, the Act sets a high standard. The debate in the Legislative Assembly in 1992 at the time this provision in the Act was introduced demonstrates that the members were well aware of the challenges such a standard would impose.

I hasten to add that I am not prepared to conclude that the decision to reject the location change requested by Messrs. Ng and Pilarinos was made on the basis of Mr. Clark's private interest that the proposal not proceed. My concern, however, is with the fact that this question arises at all. It arises because of the involvement in the decision-making process of an individual, Mr. Ford, who was aware of the allegations against Mr. Clark.

Mr. Ford, who has had a long-standing career in the public service in several Canadian provinces, was emphatic in his testimony before me that he was motivated in his dealings with Mr. MacKinnon and his recommendation to the Minister only to ensure that the appropriate public policy decision was made. I accept this. It is an unfortunate but inevitable result of the course of events in this matter that Mr. Ford's conduct has come under scrutiny at all.

It is true that those in public life will inevitably encounter situations where their private interests intersect with their public duties. The need for careful handling of these situations when they arise is part of the reason for the office I hold. However, I cannot accept that the situation here was unavoidable.

Mr. Clark's evidence is that, given the anonymous allegations, it became particularly important that the outstanding decision in respect of the 545738 B.C. Ltd./North Burnaby Inn proposal be handled in a manner that was beyond reproach. That is, I suppose, understandable.

However, it would be a happier situation for all concerned, Mr. Ford as well as for Mr. Clark, had Mr. Ford not been aware of the allegations against Mr. Clark as he set about his task of reviewing and/or supervising the decision-making process in respect of Mr. Pilarinos' proposal.

Had Mr. Clark wished Mr. Ford to review the decision-making process in regard to the 545738 B.C. Ltd./North Burnaby Inn proposal, he should, at a minimum, have refrained from sharing the Karmelita letter with him so that Mr. Ford might go about his work free from the suggestion that he was furthering Mr. Clark's private interest.

On the other hand, had Mr. Clark felt Mr. Ford was the most appropriate person to consider the response to the letter, he might have instructed him that he should not become involved in any decision-making with respect to the RFP process. In that case, a reasonable person could not conclude that there was any connection between Mr. Clark's private interest and any decision made in regard to Mr. Pilarinos' proposal.

Another possibility, of course, would have been for Mr. Clark to place the letter in the hands of the Conflict of Interest Commissioner, a step for which no member can be faulted.

These thoughts may reflect the wisdom of hindsight. Nonetheless, I am satisfied in reviewing the matter that Mr. Clark's decision to involve Mr. Ford in the way that he did reflects the exercise of an official power when Mr. Clark was in an apparent conflict of interest, in contravention of s. 3 of the Act.

4. Did Mr. Clark's direction to Mr. Ford give rise to an actual "conflict of interest"?

For an actual conflict of interest, I must consider whether the member knew he had the opportunity to further his private interest in the exercise of his official power. The question is not whether a reasonably well informed person would think such an opportunity existed, but whether such an opportunity actually existed on the facts and whether the member knew this to be the case.

Mr. Ford's recollection of the task given him by Mr. Clark was simply to do what he thought was necessary to follow upon the letter. Mr. Clark recalled that he gave the more specific instruction that Mr. Ford ensure that the process in respect of the 545738/North Burnaby Inn proposal was handled appropriately. In any event, each of Mr. Ford, Mr. Clark and Mr. Dix were clear that no suggestion was made to Mr. Ford as to what he ought to do. Mr. Ford explained his own reasoning for the steps he took and those he did not take.

Mr. Clark explained that he chose to place the matter in Mr. Ford's hands simply because he was the most senior public servant. He testified that the letter was not of great concern to him, as he was used to receiving accusatory correspondence from time to time, and that he put it out of his mind once he handed it over to Mr. Ford . Mr. Clark emphasized that as head of the civil service, Mr. Ford was to be distinguished from members of his political staff to whom he might give an instruction to advance his political interests. The fact that Mr. Ford had only just began to work in the Premier's office, having assumed the position only a month or two earlier, coupled with the evidence I heard with respect to Mr. Ford's stature as an experienced civil servant, support the conclusion that Mr. Ford acted independently in pursuing the matter, and that Mr. Clark could not have expected otherwise from him.

I also consider it significant that Mr. Ford's role in advising Minister Farnworth with respect to the response to the request for permission to change locations only came about as a result of the telephone call from the Minister after Mr. Ford had set about his inquiries. Mr. Clark did not instruct him to become involved in this way, and in fact did not become aware that this had occurred until after the fact.

Mr. Ford's consultation with the Deputy Attorney General, and his consideration of turning the matter over to the Assistant Deputy Attorney General, Criminal Justice with the possible result that a special prosecutor would be appointed, also point to the conclusion that Mr. Ford's mandate was not the furtherance of Mr. Clark's private interest.

In light of the above, it is my view that in exercising his power to assign Mr. Ford the task of following up on the Karmelita letter Mr. Clark did not consider there to be an opportunity to further his private interest. An actual conflict of interest arises only where the member knows that he or she had the opportunity to further his or her private interest. I therefore conclude that Mr. Clark was not in an actual conflict of interest.

It was argued on Mr. Clark's behalf that the "reasonably well-informed person" contemplated by the definition of apparent conflict of interest ought to be presumed to know the facts which I have found to establish that Mr. Clark did not in fact have the opportunity to further his private interest.

To my mind, the "reasonably well-informed person" should be presumed to know only the objective information apparent to the outside observer without inquiring into the subjective explanations of the individuals involved. Otherwise, there might never been an apparent conflict of interest under the Act unless there is also an actual conflict of interest. The fact that Mr. Ford was new to Mr. Clark's staff, that Mr. Clark did not consider him to be a person he could rely on to protect Mr. Clark's personal political fortune, and that Mr. Clark did not anticipate that Mr. Ford would become involved in advising the Minister on the decision he should make with respect to the proponents' request to change locations, reflect part of Mr. Clark's explanation of the legitimacy of his motives in involving Mr. Ford. These assertions indicate that Mr. Clark did not consider himself to have the opportunity to further his private interest through his direction to Mr. Ford to follow up on the Karmelita letter. However, I do not think it reasonable to impute knowledge of this thinking to the hypothetical reasonably well informed member of the public. Surely the purpose of the apparent conflict of interest prohibition is to ensure that members of the public will have confidence in the workings of government even when they are not privy to the internal thought processes of its elected members.

B. Influence

Section 5 of the Act provides that:

> 5 *A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.*

As reviewed above, the key decisions with respect to the 54738 B.C. Ltd./North Burnaby Inn proposal -- approval in principle and whether or not its proponents would be allowed to change locations -- were the responsibility of Minister Michael Farnworth. The question is therefore whether Mr. Clark used his office to seek to influence the decisions to be made by Minister Farnworth to further his own private interest. I have already concluded that Mr. Clark had a private interest in relation to Mr. Pilarinos' casino proposal on two grounds: the renovation work and the Karmelita letter.

As set out above, I have concluded that the role played by Mr. Ford in relation to the Karmelita letter did not represent a deliberate attempt by Mr. Clark to influence Minister Farnworth. There is no other evidence of indirect communications between Mr. Clark and Minister Farnworth, whereby Mr. Clark might have endeavoured to influence Minister Farnworth through some third party.

1. Areas of relevant evidence

The question of whether Mr. Clark used his office to seek to influence Minister Farnworth's decisions in order to further his private interest which arose as a result of the construction work done by Mr. Pilarinos therefore turns on consideration of the evidence of direct communications between Mr. Clark and Minister Farnworth in regard to the 545738 B.C. Ltd./North Burnaby Inn proposal. There are four areas of evidence to be considered: the evidence of Mr. Clark's discussion with Minister Farnworth on his appointment as Minister of Employment and Investment when he advised the Minister of his friendship with Mr. Pilarinos, the evidence of Mr. Clark's discussion with Minister Farnworth in regard to the outstanding

proposals prior to the July 1998 Cabinet meeting, Minister Farnworth's evidence of a conversation with Mr. Clark in January 1999, and the evidence in regard to statements made by Mr. Pilarinos to Mr. Vrahnos, in correspondence with Mr. Ng, and in telephone conversations intercepted by the RCMP.

A review of the evidence in each of these areas is followed by my analysis of the ultimate conclusion to be drawn.

a. February 1998 discussion upon Minister Farnworth's appointment

The recollection of both Mr. Clark and Minister Farnworth as to the nature and substance of their discussion is very similar. Both recognized that Minister Farnworth's assignment to the Employment and Investment portfolio was a significant promotion for Minister Farnworth, who had previously served as Minister of Municipal Affairs. This new portfolio involved a number of significant responsibilities and a high public profile. Although Mr. Clark spent time reviewing various aspects of Minister Farnworth's new portfolio, a considerable part of the discussion was spent on gaming. Mr. Clark expressed strong views about how he felt the government's gaming policy should be handled in general.

Both men recall that the question of whether Minister Farnworth was up to the task of this significant portfolio was raised by Mr. Clark, and that Mr. Clark went so far as to say words to the effect that if Minister Farnworth's performance was not satisfactory, Mr. Clark would fire him. Using strong language, Mr. Clark reminded Minister Farnworth of instances in the past where Mr. Clark felt Minister Farnworth's performance had fallen short.

It was in this context that Mr. Clark revealed to Minister Farnworth that one of the proponents in the RFP process was a friend of his. Mr. Clark identified Mr. Pilarinos by name or indicated the location of his proposal in Burnaby or at the North Burnaby Inn. Mr. Clark told Minister Farnworth that he would have to deal with this proposal on his own as Mr. Clark did not want to be involved.

In his evidence before me, Mr. Clark's explanation for sharing this information with Minister Farnworth was that he wanted to ensure that the Minister kept him away from the decision-making process in respect of his friend's proposal so that there could not be the suggestion of any impropriety. He testified that he was explicit in telling Minister Farnworth that he should handle the proposal in the same way as all the others, and that he only raised the matter with Minister Farnworth "out of an abundance of caution".

Minister Farnworth testified that he was not bothered by Mr. Clark's disclosure, that he was glad to have the information about Mr. Clark's friendship with a proponent, and that he did not see a problem with Mr. Clark's wish that he not be involved in the decision in regard to his friend's proposal.

b. Discussion prior to July 1998 Cabinet Meeting

Both Mr. Clark and Minister Farnworth recollect that the discussion consisted of a review of the decisions to be made on the outstanding proposals in the RFP process as Minister Farnworth indicated that he was ready to bring the next group of proposals forward to Cabinet for approval. The Minister referred to a few proposals which had scored well and for which approval in principle was a straightforward matter, and a good part of the discussion was spent on one proposal outside of the Lower Mainland about which Mr. Clark had some particular concerns.

With respect to the Lower Mainland proposals, Mr. Clark recalls that Minister Farnworth indicated that there were several proposals, including the 545738 B.C. Ltd./North Burnaby Inn proposal, which had problems in terms of local or municipal support. Mr. Clark recalls that he and Minister Farnworth discussed these issues and that he, Mr. Clark, reiterated his direction to Minster Farnworth to do whatever he could to minimize controversy at the municipal level. In light of the government's objective to maximize revenue from gaming proposals, Minister Farnworth indicated that he would pursue these proposals to see if he could obtain municipal support in order to identify one or two of these which could be approved. Mr. Clark recalls that Minister Farnworth therefore stated that he wanted Cabinet to delegate decision-making authority in regard to these proposals to him.

With respect to the 545738 B.C. Ltd./North Burnaby Inn proposal in particular, Mr. Clark recalls that Minister Farnworth indicated that he wanted to talk to the Mayor of Burnaby about Council's position and that he was not yet sure how the decision on this proposal might be handled in light of the municipality's opposition to the location of a casino at the North Burnaby Inn. Mr. Clark recalls that it was clear that Minister Farnworth would be seeking authority to deal with this proposal himself, so that it would not come before Cabinet for decision and Mr. Clark would not be involved.

When Minister Farnworth first appeared before me to give evidence, his recollection was that he did not discuss the Burnaby proposals with Mr. Clark during this meeting other than to indicate that he was not going to be asking Cabinet for a decision on them at the upcoming Cabinet meeting, the last before the summer break, and that he intended to deal with them later.

When Minister Farnworth re-attended to give evidence before me a second time, however, he recalled further details about his discussion with Mr. Clark. Minister Farnworth explained that on further questioning by the RCMP he was prompted to think about these matters again and that he had remembered that his review of the outstanding Lower Mainland proposals with Mr. Clark had involved some specific discussion of these proposals.

Minister Farnworth recalls that Mr. Clark emphasized that the government's revenue objectives required an additional casino in the Lower Mainland and that they reviewed the possibilities amongst the proposals.

Minister Farnworth recalls discussing with Mr. Clark the problems associated with some of the proposals, other than the two in Burnaby, because of opposition by adjacent municipal governments. Minister Farnworth testified that, prior to the discussion with Mr. Clark, he had felt that notwithstanding these problems, there was the possibility of approving at least one of these proposals. His recollection is that his discussion with Mr. Clark dissuaded him from approval of these proposals outside of Burnaby, although he did pursue them to some extent following the meeting, for example by contacting at least one mayor involved to discuss Council's position.

With respect to the Burnaby proposals, Minister Farnworth recalls that he told Mr. Clark that neither of them had scored very well and that he did not think that they were particularly good applications. In fact, Minister Farnworth testified that his view prior to the discussion with Mr. Clark was that neither of these proposals should be approved. Minister Farnworth recalls that Mr. Clark asked him why did not feel the score for the 545738 B.C. Ltd./North Burnaby Inn proposal was good enough. Minister Farnworth testified that he explained to Mr. Clark that although the score was higher than that obtained by the Halifax Street proposal, it was nonetheless relatively low, and he was concerned that, in light Mr. Clark's friendship with Mr. Pilarinos, it would not look good if the proposal was approved.

Minister Farnworth also recalls that he raised with Mr. Clark Burnaby City Council's opposition to a casino at the North Burnaby Inn, even though the RFP process did not contemplate municipalities having input into which specific proposal would be approved. Minister Farnworth recalls that Mr. Clark questioned whether the provincial government had to accept Burnaby Council's opposition. Minister Farnworth stated that Mr. Clark did not seem to appreciate that the City, through its zoning authority, had control of where a casino could be located and that he explained this to him. Minister Farnworth recalls that Mr. Clark raised the question of whether the casino might be moved to a different location and mentioned Metrotown as a possible location. Minister Farnworth recalls that he did not understand the significance of Metrotown in particular and that he told Mr. Clark that he did not think it was possible for proponents to change locations.

Minister Farnworth recalls that Mr. Clark did not dispute his views about the 545738 B.C. Ltd./North Burnaby Inn proposal and in fact reiterated that it was up to Minister Farnworth to decide which proposals to approve. However, Minister Farnworth testified that Mr. Clark's questions about this proposal indicated to him that it was the one he favoured. Minister Farnworth further testified that his discussion with Mr. Clark left him with the impression that there was the definite need to approve a further casino in the Lower Mainland (a decision had already been made to grant approval in principle for a casino in New Westminster) and that, given the opposition to the other proposals, he left the meeting with the view that he would have to look seriously at approving one of the Burnaby proposals where the municipality was at least supportive of the expansion of gaming in principle. He testified that given the low score of the

Halifax Street proposal, this meant serious consideration of approval of the 545738 B.C. Ltd./North Burnaby Inn proposal.

In response to the evidence provided by Minister Farnworth during his second appearance before me, Mr. Clark specifically denies that he discussed any of the Lower Mainland proposals with Minister Farnworth in any detail. He does not recall Minister Farnworth indicating that he was favouring one of the Lower Mainland proposals outside of Burnaby. He denies that Minister Farnworth told him of the low scores of the Burnaby proposals and of his view that they were not good applications. He does not believe Minister Farnworth told him that he did not think either of them should be approved. In fact, Mr. Clark testified that there was no specific discussion of Mr. Pilarinos' proposal other than to the extent it was one of those on which Minister Farnworth wanted to do further work. Mr. Clark denies any discussion of the location problem faced by the 545738 B.C. Ltd./North Burnaby Inn proposal or the possibility of its relocation.

With respect to the suggestion that he questioned the authority of Burnaby City Council to prevent a casino at the North Burnaby Inn, Mr. Clark points out that he would not have considered overriding Burnaby's opposition somehow given that his whole purpose in appointing Minister Farnworth to this portfolio was so that he could use his background with municipalities to improve cooperation and gain their support. Mr. Clark also denies that he raised the question of a possible relocation to Metrotown, although he believes that Mr. Pilarinos had previously told him that his proposal was for a casino at Metrotown.

Mr. Clark's evidence is that although he does not believe he emphasized to Minister Farnworth that the government wanted a casino in the Lower Mainland in order to maximize the revenue generated, this was in fact a government objective and it is possible he may have made reference in their conversation to a hope that Minister Farnworth would be able to achieve it. He does recall, however, that his general instruction to Minister Farnworth was that if the Minister was to fulfill this objective he would have to go out and arrange for municipal support. He testified that he made it clear to Minister Farnworth that he would not support the approval of any casino which was not supported by the local municipality.

c. January 1999 discussion

On his first appearance before me, Minister Farnworth was specifically asked whether he had any discussions with Mr. Clark about the 545738 B.C. Ltd./North Burnaby Inn proposal following its approval in principle. In particular, Minister Farnworth was shown a letter from Mr. Pilarinos to Mr. Ng dated January 7, 1999, in which he stated: "Last night I saw my friend to see if he had anything for me. His friend is away on holidays and is expected back on Sunday. He will know more on Monday." and advised that Mr. Pilarinos had confirmed in his evidence that "my friend" was a reference to Mr. Clark and "his friend" was a reference to Minister Farnworth. Minister Farnworth confirmed that he was indeed away on vacation on the date of this letter and that he returned from vacation on the following Sunday, as indicated by Mr. Pilarinos. However, Minister Farnworth testified that he did not recall any discussion with Mr. Clark regarding Mr. Pilarinos' application following his return from holidays.

During his second appearance before me, Minister Farnworth testified that he had recalled that he had in fact had a conversation with Mr. Clark following his return from vacation in which they discussed whether the 545738 B.C. Ltd. proponents might be allowed to relocate their proposed casino to the site of the other Burnaby proponent. Again, he explained that an RCMP interview had caused him to consider the question of how he had come to receive a letter from the 545738 B.C. Ltd./North Burnaby Inn proponents requesting a location change, and that after going over things very carefully in his mind he remembered that he had talked about this with Mr. Clark. He testified that he specifically considered the question of which of Mr. Clark or Mr. Calendino might have been the means by which he became aware of a request by the 545738 B.C. Ltd./ North Burnaby Inn proponents to change locations, and that it was this exercise that prompted him to recall his January conversation with Mr. Clark.

Minister Farnworth's evidence is that a few days after he returned from vacation in January 1999 he was at the Cabinet offices in Vancouver on unrelated business when Mr. Clark saw him and invited him into his office for an impromptu discussion. Minister Farnworth recalls that they spoke about a number of matters and that the subject of the 545738 B.C. Ltd./North Burnaby Inn proposal came up, although Minister Farnworth is not certain who raised it. Minister Farnworth recalls that Mr. Clark asked whether it might be possible for the 545738 B.C.

Ltd./North Burnaby Inn proponents to move their proposal to the location of the Halifax Street proposal. Minister Farnworth testified that they discussed the question of the two proposals coming together, and that this idea made some sense to him as it had previously been his thinking that the two Burnaby proposals could be improved in this way.

Minister Farnworth recalls that he told Mr. Clark that he did not know if this move would be possible, but that in order for him to consider it, he would need to have a letter from the proponents setting out exactly what they proposed to do. Minister Farnworth recalls that Mr. Clark accepted this and may have indicated that he would pass this information on to his friend.

On cross-examination, Minister Farnworth conceded that it is possible that it was Mr. Clark who raised the subject of a letter in explaining that he had suggested to Mr. Pilarinos that he write a letter to the Minister about the possibility of changing the location of his proposal.

In any event, Minister Farnworth was left with the impression that he would receive a letter. Minister Farnworth's sense was that Mr. Clark was in favour of the idea of the move. He further testified that if his staff advised him that such a move was permissible, he would have authorized it.

For his part, Mr. Clark denies that the discussion described Minister Farnworth took place. Mr. Clark confirmed that he did tell Mr. Pilarinos that he and his partner should send a letter to Minister Farnworth, as he had earlier testified, but insists that this was not as a result of any suggestion by Minister Farnworth. Mr. Clark said that following approval in principle of Mr. Pilarinos' proposal, Mr. Pilarinos began to raise with Mr. Clark quite frequently the question of whether he and his partner would be allowed to change locations. Mr. Clark testified that he repeatedly told Mr. Pilarinos that he did not know, that Mr. Pilarinos would have to direct his question to the responsible authorities. Mr. Clark said that he became exasperated with Mr. Pilarinos' pestering him about this issue. At some point, to pacify him, Mr. Clark made the specific suggestion that Mr. Pilarinos write a letter to Minister Farnworth.

With regard to Mr. Pilarinos' January 7, 1999 letter advising Mr. Ng that Mr. Clark had told him Minister Farnworth was away and that he would speak with him on his return, Mr. Clark said that if he was aware of Minister Farnworth's absence, and he cannot say he was, it is possible that he would have passed this on to Mr. Pilarinos, as he was endeavouring to have Mr. Pilarinos direct his questions to the Minister or his officials. Mr. Clark, however, denies that he told Mr. Pilarinos that he would speak to Minister Farnworth on Mr. Pilarinos' behalf on the Minister's return or that he ever did so.

In his testimony before me, Minister Farnworth did not specify the date of his discussion with Mr. Clark other than to say that it was a few days after his return from his vacation on January 11, 1999. However, in one of his statements to the RCMP, Minister Farnworth indicated that the discussion with Mr. Clark must have taken place on either Friday, January 15, 1999 or Monday, January 18, 1999, as Minister Farnworth's calendar shows that he had business at the Vancouver Cabinet Office on those dates.

On behalf of Mr. Clark, I have been provided with an excerpt from Mr. Clark's own calendar for January 1999 which shows that Mr. Clark had appointments taking him away from the Vancouver Cabinet Office on both January 15 and 18. Mr. Clark's counsel have also provided me with brief affidavits of Mr. Jim Green, Ms. Shelly Schnee and Ms. Renee Sarojini Saklikar in regard to their dealings with Mr. Clark on those dates.

Mr. Green, the Chairman and Chief Executive Officer of Four Corners Community Savings, deposes that he was with Mr. Clark from approximately 9:00 a.m. until between 2:00 and 3:00 p.m. on January 15, 1999. Ms. Shelly Schnee, constituency assistant to Mr. Clark, deposes that she spoke with a Mr. Stephen Leary by telephone at approximately 2:45 p.m. on January 15, 1999, that Mr. Leary advised that he was in the company of Mr. Clark and Mr. Green and that they had been engaged in touring the downtown east side since early in the morning, and that she subsequently spoke to Mr. Clark and asked him to return to the constituency office for a scheduled 3:00 p.m. meeting. Ms. Renee Saklikar deposes that she met with Mr. Clark between 8:30 a.m. and 9:45 a.m. on January 18, 1999 at Tiny's Diner on West Hastings Street. Mr. Clark's calendar indicates that he was then scheduled to take the Helijet to Victoria at 10:15 a.m., and to spend the remainder of the day in meetings in Victoria and Sechelt.

d. Statements by Mr. Pilarinos

Mr. Vrahnos' testimony, faxed correspondence between Mr. Pilarinos and Mr. Ng, and the wiretap evidence obtained by the RCMP through its interception of communications between Mr. Pilarinos and various other persons, include statements capable of suggesting that Mr. Clark had some involvement in seeking to advance Mr. Pilarinos' proposal which I must consider in examining the discussions between Mr. Clark and Minister Farnworth.

Mr. Vrahnos, Mr. Pilarinos' friend, testified that Mr. Pilarinos' statements to him included the assertion that Mr. Clark had told Mr. Pilarinos that both his proposal and that of Mr. Luu had received low scores in the evaluation process, but that Mr. Clark would arrange to have Cabinet approve Mr. Pilarinos' proposal because it had received the higher score of the two. Mr. Vrahnos testified that Mr. Pilarinos subsequently told him that Mr. Clark had assured him he would arrange for Cabinet to approve an amendment to his proposal to provide for a new location.

For a period of time in December 1998 and January 1999, during the course of their negotiations with Mr. Derek Luu for the purchase of rights to his property on Halifax Street, Messrs. Ng and Pilarinos communicated in writing, as Mr. Ng was in Malaysia. In this correspondence Mr. Pilarinos referred to the views of "his friend" with respect to their proposed strategy to relocate to Mr. Luu's property, and to his intention to discuss the relocation question with "his friend" and to obtain information from him, such as how long he thought it would take to get a response from the government as to whether the location change would be permitted. In their evidence Messrs. Ng and Pilarinos confirmed their understanding that the person whom Mr. Pilarinos referred to as "my friend" meant Mr. Clark.

The intercepted communications also contain various conversations in which Mr. Pilarinos made reference to his "friend", i.e. Mr. Clark. All of these conversations took place after Messrs. Ng and Pilarinos had received Minister Farnworth's letter rejecting their request to change locations. In light of the position of the City of Burnaby with regard to the North Burnaby Inn location, this decision effectively determined that their casino could not proceed.

The intercepted communications to which I had access were those included in the Information to Obtain A Search Warrant made available to me along with counsel for certain interested persons. There may well be additional communications intercepted by the RCMP, however, I did not consider it appropriate to pursue disclosure of these. The communications I reviewed include several comments by Mr. Pilarinos which suggest that Mr. Clark had earlier given him assurances that he would see that the location change for Mr. Pilarinos' proposal would be approved, that Mr. Clark had promised to follow up with the Minister in regard to his rejection of the location change request, and further, that Mr. Pilarinos had reason to believe that Mr. Clark might be able intervene to reverse the Minister's decision.

It is appropriate at this juncture to review the testimony of Mr. Pilarinos and Clark with respect to their discussions of the 545738 B.C. Ltd./North Burnaby Inn proposal.

It is Mr. Pilarinos' evidence in general that he was lying when he made the statements captured by the RCMP wiretap which suggest that Mr. Clark was assisting him with his proposal. Mr. Pilarinos was specifically asked why he said things which were untrue and he stated that he could give no reason, that he just "made it up", and that he did not know why. Mr. Pilarinos similarly testified that he could not remember if he had discussed with Mr. Clark the matters mentioned in his faxes to Mr. Ng and said he might have simply made these things up as well. He further denied that he ever told Mr. Vrahnos that Mr. Clark had advised him that his proposal had scored higher than that of Mr. Luu.

Mr. Pilarinos testified before me that sometime in the fall of 1997, prior to the submission of the 545738 B.C. Ltd./North Burnaby Inn proposal, he told Mr. Clark that he was applying for a gaming license. Mr. Pilarinos felt that he ought to make Mr. Clark aware of his plans to submit a proposal, given Mr. Clark's position. Mr. Pilarinos conceded, however, that he was always hopeful that Mr. Clark, as a friend, might in some way help him with his casino proposal. He told his original partners, Mr. Ng and Mr. Katanas, that he hoped that Mr. Clark might help with their casino proposal, but he did not know if he would.

Mr. Pilarinos' evidence is that, up to the announcement of approval in principle of the 545738 B.C. Ltd./North Burnaby Inn proposal, his discussions with Mr. Clark in respect of the

proposal were limited to general comments about the process. Mr. Pilarinos said that from time to time Mr. Clark would ask him how things were going with his proposal, and Mr. Pilarinos would indicate what, if anything, he had heard from the authorities.

With regard to the location issue, Mr. Pilarinos recalled telling Mr. Clark about the opposition of Burnaby Council to their proposed location and efforts of himself and Mr. Ng to find a location acceptable to the City of Burnaby. Mr. Pilarinos testified that he believes that he told Mr. Clark that the City favoured Metrotown as a location for a casino and that they were looking at that option. When the prospect of obtaining Mr. Luu's property came up, Mr. Pilarinos recalls asking Mr. Clark if he thought there would be any problem relocating their casino proposal to this location. To Mr. Pilarinos' recollection, Mr. Clark said that if the municipality was supportive he could not see why there should be any problem. Mr. Clark also suggested that Mr. Pilarinos write directly to Minister Farnworth for permission to relocate.

Mr. Clark, for his part, testified that any suggestion in Mr. Pilarinos' statements in the intercepted communications that he had given assurances to Mr. Pilarinos about his proposal or intervened in any on way on Mr. Pilarinos' behalf is absolutely false. He says that although Mr. Pilarinos did, on occasion, raise the subject of his proposal in casual conversation, there was not any real discussion between them. He recalls Mr. Pilarinos explaining the location change problem, and that Mr. Pilarinos began to raise the topic of his proposal more often in January or February 1999, when this became his focus. Mr. Clark testified that, for a time, he understood that Mr. Pilarinos was proposing a casino at Metrotown, but that he subsequently became aware that Mr. Pilarinos was attempting to negotiate a deal with Mr. Luu for his property. His evidence is that he told Mr. Pilarinos he had no idea if he and Mr. Ng would be allowed to change their location. Mr. Clark does, however, recall that he suggested that Mr. Pilarinos write directly to Minister Farnworth to make this request.

With regard to the period after the location change was turned down, Mr. Clark denies that he told Mr. Pilarinos he would talk to Minister Farnworth or that he provided Mr. Pilarinos with any information as to how or why the request for a location change was rejected, other than to say that Minister Farnworth must have had good reasons.

2. Did Mr. Clark "seek to influence a decision" to be made by Minister Farnworth "to further" his "private interest"?

The question to be answered is whether the above areas of evidence, viewed separately or as a whole, establish that Mr. Clark sought to influence Minister Farnworth to decide in favour of Mr. Pilarinos' proposal in order to further Mr. Clark's private interest, i.e. in order to be in a position to use government approval of Mr. Pilarinos' casino proposal to obtain favourable terms for the work done by Mr. Pilarinos, or after August 1998, to see that Mr. Pilarinos' proposal received approval in light of his generosity to the Clarks in not charging for his work. This question has two aspects: 1) did the conversations take place as recently recalled by Minister Farnworth? 2) if they did, does the evidence establish to the requisite standard that Mr. Clark was, through these conversations, seeking to influence Minister Farnworth?

There is no issue as to whether the February 1998 discussion between Mr. Clark and Minister Farnworth took place or as to what was said. The only issue is with respect to Mr. Clark's intentions.

Mr. Clark denies that he was motivated by the hope that the information about his personal relationship with a proponent would cause Minister Farnworth to favour his friend's application. Further, according to Mr. Clark, the possibility that Minister Farnworth might be so influenced, even if that was not Mr. Clark's intention, did not cross his mind.

With the greatest of respect to Mr. Clark, it is my conclusion that the possibility that knowledge of Mr. Clark's relationship with Mr. Pilarinos might influence Minister Farnworth must have been within Mr. Clark's contemplation.

By Mr. Clark's own account, the tenor of his discussion with Minister Farnworth was aimed at "putting the fear of God into him", with respect to Mr. Clark's high expectations for his performance in the senior position Mr. Clark was awarding him. The inference that in revealing his friendship in this context, at virtually the same time as he was advising Minister Farnworth of his decision to grant him an important new portfolio, Mr. Clark was at least hopeful that knowledge of his friendship with Mr. Pilarinos might motivate Minister Farnworth to do a favour

for his friend, if possible, is to me compelling. At the time of this conversation, the selection of the successful proposals was nominally the responsibility of Cabinet and not Minister Farnworth alone. However, Mr. Clark would have been well aware that Minister Farnworth, as Minister responsible, would have a significant role in making recommendations to Cabinet.

Furthermore, I am simply not persuaded that Mr. Clark's stated motive of avoiding a conflict of interest required him to disclose his personal friendship to the very individual who would have primary responsibility for overseeing the decision with respect to his friend's proposal. The objective of ensuring that Mr. Clark did not become involved in decision-making in respect of his friend's proposal could have been accomplished in many other ways.

Minister Farnworth's evidence is that the Premier's relationship with the proponent did in fact become a factor which he considered in making his decision in regard to approval in principle of the 545738 B.C. Ltd./North Burnaby Inn proposal.

For there to be a violation of s.5 of the Act as a result of Mr. Clark's conversation with Minister Farnworth in February 1998, however, I must conclude that Mr. Clark's disclosure of his relationship with Mr. Pilarinos reflected a deliberate attempt by Mr. Clark to further his private interest. Whether or not there is a sufficient basis for such a conclusion is properly discussed below, in the context of the related evidence.

With respect to the discussion between Mr. Clark and Minister Farnworth in July prior to the Cabinet meeting, both recall that they touched upon the problems associated with the outstanding Lower Mainland proposals. Both agree that no decisions were made, and that it was clearly Minister Farnworth's responsibility to decide which proposal among them could be approved. However, there is a significant divergence as to the degree of detail in which the proposals were discussed, and whether Mr. Clark's comments can reasonably be construed as having been intended to lead Minister Farnworth to the conclusion that he would have to approve Mr. Pilarinos' proposal.

For Minister Farnworth, the review of the issues surrounding the Lower Mainland proposals outside of Burnaby with Mr. Clark left him with a sense that these were not acceptable

choices. On cross-examination by Mr. Clark's counsel, however, Minister Farnworth conceded that he was aware of the problems with these proposals well before his discussion with Mr. Clark. He was further prepared to agree that "Mr. Clark had nothing to do with [these applications] being basically dead in the water". Minister Farnworth also agreed that the logic of approving the higher scoring proposal in Burnaby, i.e. Mr. Pilarinos' proposal, leaving it to the City to use its zoning authority to determine whether or not the casino would be allowed to proceed, remained a part of his decision-making process even after his discussion with Mr. Clark in July 1998.

Mr. Clark and Minister Farnworth disagree with respect to whether they had a discussion of whether the City Council's opposition to the 545738 B.C. Ltd./North Burnaby Inn proposal might be solved by a relocation of the proposed casino. Minister Farnworth's evidence is that he told Mr. Clark that he did not know the answer to this question. He does not suggest that Mr. Clark told him how this matter ought to be handled.

Minister Farnworth's account of his January conversation with Mr. Clark also raises a direct conflict in their evidence, as Mr. Clark denies that this conversation occurred.

The fact that Minister Farnworth denied having any discussions with Mr. Clark in relation to the 545738 B.C. Ltd./North Burnaby Inn proposal when he initially testified before me, is a factor I must take into account in weighing his new evidence in this regard. When asked about the change in his evidence Minister Farnworth stated that this matter had been the most trying experience of his life and that he had tried to put it out of his mind. However, he testified that subsequent to his first appearance before me, an interview with the RCMP had caused him to go over events again and that, after some sleepless nights, he recalled a number of details he had not previously recollected. He therefore contacted his counsel and arranged to meet again with the RCMP and to attend again before me to give further evidence.

In these circumstances, I have considered what motive other than an honest wish to give an account of his refreshed recollection might have prompted Minister Farnworth to give this evidence. In his testimony, Mr. Clark suggested that Minister Farnworth feels that he made a foolish decision in approving the 545738 B.C. Ltd./North Burnaby Inn proposal and is now

trying to find a rationale for how he came to it. However, this does not explain why Minister Farnworth would have come back before me in the way that he did to describe discussions which could expose the Minister himself to criticism. If anything, coming forward to modify one's earlier evidence carries with it the risk of bringing one's own credibility into question. It is clear to me that Minister Farnworth's decision to do so, in a matter of such significance to Mr. Clark and the public interest, is not something which the Minister did lightly.

Mr. Clark, on the other hand, might be seen to have a motive to deny any discussion of Mr. Pilarinos' proposal in order to refute the suggestion that he acted improperly, just as any person facing allegations of wrongdoing has a reason to deny the allegations. The existence of such a motive does not, of course, necessarily imply that its possessor will yield to it. Furthermore, as the individual most affected by this matter, no one has had a greater motivation than Mr. Clark to carefully think over his role in these events and what discussions did and did not take place. However, the circumstances of Minister Farnworth's testimony indicate that he also has taken care in reviewing his recollection of this matter.

I conclude that Minister Farnworth's motive in providing the new evidence was entirely proper. In submissions before me, it was not suggested that Minister Farnworth's honesty was to be questioned in any way. Rather, the submissions of Mr. Clark's counsel focussed on the distinction between credibility and reliability. It was argued that, while Minister Farnworth's testimony was no doubt given in good faith, his new evidence cannot safely be relied upon due to the recency of its recollection and, in particular, the influence that may have been brought to bear on him through his questioning by the RCMP.

To my mind, it is possible that Minister Farnworth is mistaken in some of the details he attributes to his conversation with Mr. Clark in July and that he is assuming that more of his thinking about the casino proposals was articulated in his conversations with Mr. Clark than was in fact the case. However, his account of the conversation has the ring of truth in many respects. For example, Minister Farnworth's recollection of Mr. Clark's reference to Metrotown during this conversation (when Minister Farnworth had no other reason to think of this location but Mr. Clark was aware of Mr. Pilarinos' consideration of this site for his proposed casino) is particularly compelling. On cross-examination, Minister Farnworth was shown an outline for the

presentation by the 545738 B.C. Ltd./North Burnaby Inn proponents to government representatives in February 1998 which was prepared by their counsel. It indicates that the proponents revealed to the government representatives that they were considering a Metrotown location as an alternative to the North Burnaby Inn. However, Minister Farnworth testified that he did not see this document, and does not recall ever being briefed about it.

On all of the evidence, I conclude that the discussion between Minister Farnworth and Mr. Clark in July did touch on the decision which Minister Farnworth faced in respect of Mr. Pilarinos' proposal. The difficulty I see is in drawing the conclusion, based on the submissions and the evidence I have received, that Mr. Clark necessarily intended by this conversation to influence the decision which Minister Farnworth had to make in order to further his private interest.

Mr. Clark's counsel provided me with a two page letter report prepared by a Mr. John I.R. Weller of Pacific Polygraph Services Ltd. which indicates that Mr. Clark underwent a polygraph examination on November 28, 2000, during which he answered in the negative to the following questions:

> "Did you appoint Mike Farnworth as Minister responsible for gaming in order to influence the Pilarinos application?"
>
> "Did you pressure Farnworth directly or indirectly to approve a casino in Burnaby?"
>
> "Did you meet with Farnworth in Jan 99 and ask that the Pilarinos proposed casino be moved to a different site?"

Mr. Weller's letter states that three polygraph charts were produced in respect of the questions asked of Mr. Clark and that the physiological responses recorded on these charts were those that he would anticipate from someone who was not attempting to deceive the examiner. The report does not include these charts, or Mr. Weller's professional qualifications, but the former are said to be on file at Mr. Weller's office and available for review.

Polygraph evidence is not admissible in the courts of Canada. Such evidence is considered to offend against a number of long-standing evidentiary rules, including the principle that the credibility of a witness is for the trier of fact to assess. In conducting my inquiry, however, I am not necessarily bound to adhere to the rules of evidence as they are applied in a court of law. I acceded to Mr. Gibbons' request to introduce Mr. Weller's report in evidence in order to consider what weight, if any, ought to be given to it.

I note that the first and third questions apparently posed to Mr. Clark address scenarios that I have not found to arise on the evidence before me. It was not suggested that Mr. Clark deliberately appointed Minister Farnworth as the minister responsible for gaming in order to be able to exercise some influence over his decision in regard to Mr. Pilarinos' casino proposal, nor was it suggested that Mr. Clark ever specifically asked Minister Farnworth to move Mr. Pilarinos' casino to another site. In these circumstances, and for the same reasons that the courts refuse to even admit polygraph evidence, I conclude that the weight to be attached to the polygraph evidence in this case is minimal.

The statements of Mr. Pilarinos provide some evidence capable of suggesting that Mr. Clark might have been engaged in deliberate efforts to facilitate the success of Mr. Pilarinos' proposal. Notwithstanding Mr. Pilarinos' evidence before me, I am inclined to conclude that he was telling the truth in the statements captured by the RCMP wiretap in regard to his understanding of the assurances he had been given by Mr. Clark. Mr. Pilarinos was unaware that these calls were being intercepted and no doubt believed that his statements were made in confidence. These communications are also consistent with the statements of Mr. Pilarinos reported by Mr. Vrahnos and the faxes sent by him to Mr. Ng which suggest that Mr. Pilarinos was relying on the advice and assistance of Mr. Clark.

Counsel for Mr. Clark argued that I should reject the veracity of this evidence because, they say, it is contradicted by statements made to the RCMP by Burnaby City Councillor Jim Young who periodically consulted with Mr. Pilarinos and his partner. Although I declined to call Mr. Young as a witness, I received in evidence a copy of a statement given by him to the RCMP provided to me by Mr. Clark's counsel. In particular, Mr. Gibbons focussed upon a statement by Mr. Young to the effect that Mr. Pilarinos had on one occasion asked him to

telephone Mr. Clark. As recorded in the transcript prepared by the RCMP, Mr. Young stated that Mr. Pilarinos asked him to call Mr. Clark because Mr. Pilarinos felt that "if he [Clark] fully understood ...the Burnaby council's position with respect to the two uh charitable casinos ... it might clarify things for him." Mr. Gibbons submitted that this apparent need to enlist Councillor Young to help him to gain the assistance of Mr. Clark contradicts the assertions made by Mr. Pilarinos to others that Mr. Clark was in fact helping him, and establishes that he was lying when he made these assertions.

It does not seem to me that this evidence is necessarily inconsistent with Mr. Pilarinos' statements that suggest he understood that Mr. Clark was already providing assistance to him in regard to his proposal. Mr. Young, as a Councillor for the City of Burnaby, was in a position to convey with some authority Burnaby Council's position with respect to the two casinos proposed for Burnaby in a way that Mr. Pilarinos could not. If anything, Mr. Young's evidence might be seen to confirm that Mr. Pilarinos saw Mr. Clark as being in a position to take steps to facilitate the success of Mr. Pilarinos' proposal, contrary to Mr. Clark's assertions that he told Mr. Pilarinos he would have no involvement in the process in relation to his casino proposal.

That being said, I remain uncertain as to whether Mr. Pilarinos' belief in Mr. Clark's assistance was necessarily matched by deliberate conduct on Mr. Clark's part. That Minister Farnworth has, in somewhat unusual circumstances, now recalled that his conversation with Mr. Clark in July was important in making up his mind to approve Mr. Pilarinos' proposal does not by itself answer this question.

There is no doubt in my mind that Mr. Clark should have refrained from engaging in any discussion with Minister Farnworth relevant to the outcome of Mr. Pilarinos' proposal. I am particularly troubled by his conduct in light of the evidence that Mr. Clark recognized at the outset the need for him to remain uninvolved in the decision-making for this proposal, as he advised both Minister Farnworth and Mr. Dix. Given Mr. Clark's awareness of the potential sensitivity of his connection to Mr. Pilarinos, it is difficult to conclude that his failure to abide by his own admonition represented an oversight on his part.

Nonetheless, I am not satisfied that I have a sufficient basis in the evidence before me on which to conclude that by discussing the matter with Minister Farnworth in July, Mr. Clark was seeking to influence the Minister's decision in order to further Mr. Clark's private interest vis a vis the renovation work done for him by Mr. Pilarinos. I say this bearing in mind that as of that date, the evidence is that Mr. Clark was not yet aware that Mr. Pilarinos would refuse payment for his own efforts.

Similarly, although I am uncomfortable with the manner in which Mr. Clark disclosed his personal relationship with Mr. Pilarinos to Minister Farnworth upon his appointment as Minister of Employment and Investment, the evidence before me does not support a conclusion that Mr. Clark was thereby deliberately seeking to obtain a personal financial gain.

The conversation between Mr. Clark and Mr. Pilarinos took place in February 1998. At that time, Mr. Pilarinos had applied for the building permit in respect of the planned renovation work on Mr. Clarks' home, but work had not yet begun. Although Mr. Clark and his wife had told Mr. Pilarinos that they wished to pay him for his work, no price had been set.

To find that Mr. Clark was acting in attempt to further his private interest, I would have to conclude that Mr. Clark was hoping to influence Minister Farnworth to favour his friend's application in order to be in a position to negotiate a favourable price with Mr. Pilarinos when the time came. I am not prepared to make such a finding on the evidence before me.

The remaining area of evidence is in relation to the January 1999 discussion between Minister Farnworth and Mr. Clark which Minister Farnworth has only recently recalled, and which Mr. Clark denies took place.

Minister Farnworth's recollection of this conversation is consistent with Mr. Clark's evidence to that extent that Mr. Clark testified that Mr. Pilarinos had told him about his plan to obtain rights to Mr. Luu's Halifax Street property, and that, beginning in around January 1999, Mr. Pilarinos began to actively pester Mr. Clark for his advice about whether a location change would be allowed. Most striking of all, the conversation fits with Mr. Pilarinos' January 7, 1999

fax to Mr. Ng in which he reported that Mr. Clark had told him of his plan to discuss the matter with the Minister on his return from vacation.

Once again, Mr. Gibbons points to a reference in Mr. Jim Young's statement to the RCMP to refute Mr. Pilarinos' statement in the fax to the effect that Mr. Clark was assisting him. In his statement, Mr. Young states that he agreed to try to contact Minister Farnworth in order to question him about his decision to approve a casino at the North Burnaby Inn, notwithstanding Burnaby City Council's opposition. Mr. Young goes on to say that he was unable to reach Minister Farnworth and that he explained to Mr. Pilarinos that he had learned that Minister Farnworth was going away on holidays and would be gone for some period of time. Mr. Gibbons says that this establishes that it was Mr. Young, and not Mr. Clark, who provided Mr. Pilarinos with the information about Minister Farnworth's absence on vacation which he then relied upon in advising Mr. Ng that "my friend" (Mr. Clark) had advised him that "his friend" (Minister Farnworth) would return from vacation on Monday, January 11.

With respect, Mr. Young's statement to the RCMP does not suggest that Mr. Young had learned the precise date of Minister Farnworth's return or that, if he had, that he reported it to Mr. Pilarinos.

Mr. Clark's counsel also took issue with the reliability of Minister Farnworth's account of the date in January on which his discussion with Mr. Clark took place. The affidavit evidence provided by Mr. Gibbons is extremely brief, and some of it is hearsay. However, coupled with the entries from Mr. Clark's calendar, it clearly does raise a serious question as to the accuracy of Minister Farnworth's statement that his discussion with Mr. Clark took place on either of January 15, 1999 or January 18, 1999. In fact, on cross-examination, Minister Farnworth conceded that his discussion with Mr. Clark may have occurred on January 13, 1999, when his calendar shows that he had a meeting with Mr. Clark in Victoria to brief him on the White Paper on Gaming.

I think it probable, having regard to the lapse of time since the meeting in question, that Minister Farnworth's memory as to the precise date of the meeting in January 1999 may have let him down. At the same time, although Minister Farnworth testified that he may not be sure of

where it occurred or on what date, he was unshaken on cross-examination as to his certainty that the discussion with Mr. Clark took place.

I have concluded that Mr. Clark had a discussion with Minister Farnworth in January 1999 in which he inquired whether the 545738 B.C. Ltd./North Burnaby Inn proponents might be permitted to modify their proposal to make use of the Halifax site of the competing Burnaby proponent, and that their ensuing discussion left Minister Farnworth with the impression that he would be receiving a letter on behalf of the proponents making such a request.

Although I do not condone Mr. Clark's decision to discuss Mr. Pilarinos' proposal with Minister Farnworth, I am of the view that he was prompted to do so as a result of Mr. Pilarinos' repeated attempts to raise the matter with him around this time. Both Mr. Clark and his wife testified before me that Mr. Pilarinos' conduct became quite bothersome, with Mr. Pilarinos coming to their home with unusual frequency and often in an agitated state.

Once again, the finding that this discussion with Minister Farnworth took place does not necessarily encompass a conclusion that Mr. Clark was thereby acting in violation of s. 5 of the Act.

Although Minister Farnworth testified that he had gained the impression that Mr. Clark was in favour of allowing Mr. Pilarinos and his partner to move their proposal to the Halifax Street site, he did not say that his conversation with Mr. Clark influenced him to see that this occurred. Rather, Minister Farnworth testified that when the letter of request arrived from the proponents, he simply forwarded it to his staff to determine what the appropriate response should be. He stated that if he had been advised the requested change was permissible, he would have been comfortable with that decision. He also stated that he had no difficulty accepting Mr. Ford's recommendation that the request be rejected.

I am persuaded that I do not have a sufficient basis on the evidence before me to conclude that Mr. Clark's purpose in discussing the possibility of Mr. Pilarinos and his partner relocating their proposal to Mr. Luu's site with Minister Farnworth in January 1999 was to

convey to the Minister his support for this solution so as to maximize the chances that he would approve it.

In all of the above circumstances, I am not prepared to conclude that Mr. Clark violated s.5 of the Act.

C. Accepting extra benefits

Section 7 of the Act provides that:

> 7 *(1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance or his or her duties of office.*

My predecessor, Commissioner Hughes, concluded that the two conditions required for a breach of the prohibition in the Act against accepting extra benefits are 1) that the member knew or ought to have known that he or she was receiving a personal benefit; and 2) that this personal benefit must be connected, directly or indirectly, with the performance of the member's duties of office."[5]

1. Did Mr. Clark know, or should he have known, that he was receiving a personal benefit?

I have already found that construction services which Mr. Pilarinos provided for Mr. Clark's Vancouver home represented a personal benefit within the meaning of the Act. However, it was argued on behalf of Mr. Clark that he did not know, and could not reasonably be expected to have known, that he had received a benefit from Mr. Pilarinos and therefore cannot be said to have "accepted" it.

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[5] Opinion of the Conflict of Interest Commissioner dated May 18, 1994 re: Zimhelt at 28

While it may be true that Mr. Clark was uncertain of precisely what work Mr. Pilarinos had himself done on the renovation of the Clarks' home, as Mr. Clark was away in Victoria during most of the period when the project was carried out, I am not persuaded that this left Mr. Clark unaware that Mr. Pilarinos had provided the Clarks with valuable services. Although it is my understanding that Ms. Dale Clark had most of the dealings with Mr. Pilarinos in regard to the renovations, it was not suggested to me that she played any role in selecting, hiring or supervising the subcontractors or that she told her husband she had done so. In fact, when called to give evidence by Mr. Clark's counsel, Ms. Clark testified that she works part-time and that even when she was not at work, she generally did not spend time at home during the renovations as she did not find the work site a pleasant place to be. Mr. Clark's absence from home during the renovations serves to reinforce the conclusion that he must have known that Mr. Pilarinos was arranging and overseeing the project as neither Mr. Clark nor his wife were doing this.

Furthermore, I do not think it necessary that Mr. Clark have been aware of the precise value of the benefit granted by Mr. Pilarinos to satisfy the first condition under s.7 of the Act. Mr. Clark knew Mr. Pilarinos had taken the trouble of obtaining the building permit and plans for the project (although I accept that the Clarks reimbursed Mr. Pilarinos for the amounts paid to the City of Vancouver and to the designer of the building plans), and he knew that Mr. Pilarinos had selected and hired the sub-trades and purchased many of the materials necessary for the renovation. The latter would have come to Mr. Clark's attention, at the latest, at the time of his discussion about payment with Mr. Pilarinos in August 1998, when Mr. Pilarinos presented him with a list of the expenses he had incurred on the project.

Most importantly, Mr. Clark's evidence before me was that he recognized that the list of expenses presented to him by Mr. Pilarinos did not include any amount for the work Mr. Pilarinos had done organizing the project or for his own labour. He also testified that it was particularly significant to him that his wife, who was more familiar with the work done by Mr. Pilarinos, felt that the remaining amount claimed by Mr. Pilarinos (approximately $3,200) was insufficient compensation, and that it seemed too low in Mr. Clark's view as well.

Mr. Clark's counsel provided me, at virtually the end of my inquiry, with reports of a quantity surveyor retained by them which assign a value to the renovation work on the Clarks'

home which is less than the amount actually paid by the Clarks. On the basis of this evidence it is suggested that Mr. Clark may not have received any benefit from Mr. Pilarinos because he could have had the project completed by another contractor for an amount equal to or less than the Clarks paid to Mr. Pilarinos. To my mind, this analysis is refuted by Mr. Clark's own testimony, wherein he confirmed his understanding that Mr. Pilarinos was insisting on contributing his own time for free.

Although I agree that there are some benefits which may be too minor to fall within the scope of the Act, I am satisfied that when Mr. Clark acceded to Mr. Pilarinos' wish to forego any payment for his own efforts on the renovation of the Clarks' home, he knew this work to be of more than trifling value, and that he thereby accepted a benefit sufficient to make out the first condition of s.7.

2. Was the benefit received by Mr. Clark connected, directly or indirectly, with the performance of his duties of office?

It was argued on behalf of Mr. Clark that Commissioner Hughes' decision in the *Zirnhelt* opinion[6] is binding authority for the proposition that a violation of s.7 requires proof that the member knew that the benefit he or she received was connected directly or indirectly with the performance of his or her duties of office.

Putting aside the question of whether opinions of previous holders of this office with respect to the interpretation of the Act are legally binding on those who come after, I do not agree that the *Zirnhelt* opinion stands for the proposition cited by counsel. Although Commissioner Hughes did conclude that knowledge of receipt of the benefit was required, he did not set any knowledge requirement with respect to the benefit being connected with the member's duties of office. His opinion frames the conditions for a violation of s. 7 [then s.6] as follows:

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[6] *supra, note 5.*

"1. that the member knew or ought to have known that he or she was receiving preferential treatment and, thus, accepting a personal benefit; and

2. that this personal benefit must be connected, directly or indirectly, with the performance of the member's duties of office." [my emphasis].[7]

The submissions of Mr. Clark's counsel amount to an argument that the decision must be read so as to carry the subjective requirement that "the member knew" forward from condition one to condition two, without the alternative objective requirement that "the member ought to have known".

In fact, Commissioner Hughes' analysis of the facts in the *Zirnhelt* case includes only the objective factors that might be said to point to a connection between the benefit and Minister Zirnhelt's office without any reference to the Minister's state of knowledge in regard to them.

Nonetheless, it is not entirely clear to me that Commissioner Hughes would not have wished to see some mental element brought home to the member in regard to the necessary connection between the benefit and the member's office. As it was Commissioner Hughes' finding in the *Zirnhelt* case that it could not be said that the Minister knew or ought to have known that he had received a benefit, and also that the evidence did not establish a connection between the benefit and the Minister's office to the requisite standard, he was not faced with the question of whether a violation could be found in the absence of some knowledge element on the part of the member.

By contrast, in this case, I have concluded that Mr. Clark in fact knew he had received a benefit from Mr. Pilarinos. The question of whether the benefit was connected, directly or indirectly, with Mr. Clark's office is therefore decisive of whether Mr. Clark violated s.7 of the Act.

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7 *supra, note 5.*

It is my view that it is appropriate that there be some mental element in relation to the existence of a connection between the benefit and one's duties of office before a member can be found to have wrongfully accepted a benefit within the meaning of the Act. Accordingly, I consider that in order to establish a violation of s.7, I must find that Mr. Clark knew, or at least ought to have known, that Mr. Pilarinos' decision not to charge for his work on the construction project was connected, directly or indirectly, with Mr. Clark's performance of his duties as Premier.

One sense in which a benefit may be connected with a member's duties of office is where a member has entered into a deliberate *quid pro quo* arrangement whereby he or she accepts the benefit in exchange for agreeing to exercise his or authority so as to obtain an advantage for the party granting the benefit. However, it is my view that the net cast by s. 7 extends beyond situations where a deliberate *quid pro quo* arrangement has been made.

Although a much less serious violation, a member may also run afoul of the Act by accepting a benefit (other than those incidental to the protocol or social obligations associated with his or her office) when he or she knows, or ought to know, that the person providing it is hopeful that it will influence the member's discharge of his or her official duties, even if the member has not offered and does not intend to exercise his or her authority to benefit that person. The purpose of the Act in ensuring public confidence in the integrity of politicians is only fulfilled if no such benefits are tolerated, regardless of their effectiveness in bringing about results for those who grant them.

On the facts of this case, a finding that Mr. Clark knew, or ought to have known, that Mr. Pilarinos provided his services for free in the hope that this would prompt Mr. Clark to take steps to promote government approval of his casino proposal would constitute a violation of the Act.

Consideration of whether such a scenario existed in this case requires analysis of Mr. Pilarinos' conduct.

In his evidence, Mr. Pilarinos conceded that he always hoped that Mr. Clark would help him with his proposal in some way because of their friendship. However, he denied that he did the free construction work for the Clarks because he expected Mr. Clark to do something to assist his proposal, saying that he did work for many friends, although he did not suggest that these other projects were on the scale of the Clarks' project.

At the same time, Mr. Pilarinos was prepared to concede, for example, that it crossed his mind that providing Mr. Clark with lumber for the deck on his Okanagan cabin might make Mr. Clark want to do something in return vis a vis the casino proposal. According to Mr. Vrahnos, Mr. Pilarinos went so far as to tell him that the reason he was doing the construction work on Mr. Clark's home for free was because Mr. Clark was helping him with his application.

Given the remarkable coincidence in timing between Mr. Pilarinos' unpaid efforts on behalf of the Clarks and the submissions of Mr. Pilarinos' proposal, I find Mr. Pilarinos' denials hard to accept. Mr. Pilarinos' own evidence is that he had talked to Ms. Clark about doing a renovation of the Clarks' home on and off over an extended period of time, but that he only put the project in motion after his proposal was submitted. To be specific, the 545738 B.C. Ltd. proposal was submitted on November 24, 1997 and Mr. Pilarinos applied for the building permit for the Clarks' renovation on December 17, 1997. The government announced the first group of successful proponents in May, 1998, and Mr. Pilarinos saw the renovation work through in June and July, revealing his unwillingness to accept payment from the Clarks for his efforts in August 1998, while he was still waiting for government's response to his own proposal.

As far as Mr. Pilarinos knew, the successful proposals were to be selected by Cabinet -- this was the representation made in the RFP document -- and Mr. Pilarinos knew Mr. Clark to be a member of Cabinet. Mr. Pilarinos' statements to Mr. Vrahnos and others demonstrate at a minimum that Mr. Pilarinos was prepared to let them believe that there was a connection between his construction services and anticipated assistance from Mr. Clark.

Mr. Pilarinos may well have been motivated to some extent by his friendship with the Clarks. I find, however, that he must also have been motivated, at least in part, by a perception

that doing this work for Mr. Clark might assist his proposal. Perhaps Mr. Pilarinos merely intended by his generosity to demonstrate how seriously he took his friendship with Mr. Clark so that Mr. Clark would be motivated to see his friend's cause advanced. However, I am satisfied that there must have been some kind of connection in Mr. Pilarinos' mind between the construction work and Mr. Clark's position as Premier.

I am bolstered in this conclusion by Mr. Pilarinos' behaviour following the approval in principle when the question of the location change became pressing. Mr. Clark himself recalls that the frequency of Mr. Pilarinos' visits to the Clarks' home increased during January and February, when Mr. Pilarinos, who became increasingly agitated, often raised the issue with him. The surveillance and communications observed by the RCMP on the day the letter was received from Minister Farnworth indicate that Mr. Pilarinos went to Mr. Clark's home within a few hours of its receipt, and that Mr. Clark figured prominently in Mr. Pilarinos' discussions with his business partner and other confidants that day and in the days following. This evidence demonstrates to me that Mr. Pilarinos saw Mr. Clark as a significant ally or resource in respect of his proposal. I cannot accept that there would have been no connection in his mind between the work he did for Mr. Clark and the assistance he hoped to receive from him.

I have concluded, however, that the state of Mr. Pilarinos' mind as to whether there was a connection between the benefit he gave Mr. Clark and Mr. Clark's office should not be determinative. For a violation of s. 7, I must also find that Mr. Clark knew or ought to have known that Mr. Pilarinos had made such a connection.

Mr. Clark testified that he felt that Mr. Pilarinos pushed the renovation project upon him to some extent. However, his evidence is that it did not concern him nor did it even occur to him that Mr. Pilarinos' eagerness to pursue the construction work was somehow related to his casino proposal.

It was emphasized before me that Mr. Clark and his wife understood that Mr. Pilarinos had done work for other people in the neighbourhood without payment and that this reasonably would have prevented Mr. Clark from questioning Mr. Pilarinos' motives. The tenor of Mr. Clark's evidence is that he made no connection between Mr. Pilarinos' work and his position

as Premier because it was his practice to keep his life at home in the neighbourhood with his family separate from his political role. Unfortunately, this objective does not free Mr. Clark from his obligations under the Act to ensure that his conduct promotes public confidence in the integrity of elected public officials and to scrutinize carefully gifts offered to him.

By Mr. Clark's own account, he and his wife recognized that the work Mr. Pilarinos was carrying out for them was a bigger project than those he had done for other neighbours, and that this is what led them to emphasize to him at the outset that they would insist upon paying him. Although the families did favours for each other in terms of social activities and the care of their children, the efforts on the part of Mr. Pilarinos in respect of the renovation were of a different degree altogether. Furthermore, the fact that Mr. Pilarinos may have done construction jobs for other people in the neighbourhood does not mean that his motives in regard to the work for the Clarks may not have been different.

Mr. Clark was aware that the casino proposal was a major focus of Mr. Pilarinos' attention and that whether or not it received government approval was extremely important to him. He knew from Mr. Pilarinos' questions to him that he considered Mr. Clark to have some knowledge of or at least access to information about the RFP process.

Mr. Clark stated that his insistence at the outset that Mr. Pilarinos receive payment for his efforts primarily reflected his concern not to take advantage of a friend. However, both Mr. Clark and his wife testified that they were conscious that, given Mr. Clark's position as Premier, it was important that their financial dealings with Mr. Pilarinos be beyond reproach. I am also mindful that Mr. Clark was conscious of the potential for an appearance of impropriety as a result of Mr. Pilarinos having a casino application before government even before Mr. Clark became aware that Mr. Pilarinos did not want to accept payment from the Clarks for the construction work. Mr. Clark's evidence is that he advised Minister Farnworth and Mr. Dix of his relationship with Mr. Pilarinos in February and June of 1998, respectively, so that they could take steps to insulate him from the process and refute any suggestion of wrongdoing.

The implications of Mr. Pilarinos' activities for him, as Premier, were thus on Mr. Clark's mind from very early on.

In my view, it strains credulity to suggest Mr. Clark would not have recognized that Mr. Pilarinos is unlikely to have provided services of the magnitude he did had Mr. Clark not been Premier. I do not consider Mr. Pilarinos' efforts to be within the range of favours normally granted between friends, even close friends.

In all the circumstances, I am satisfied that Mr. Clark must have been aware that Mr. Pilarinos' gift of free construction work was connected directly or indirectly with Mr. Clark's duties as Premier and that he should not have accepted it.

This finding reflects my view that had Mr. Clark wished to, he could, without difficulty, have persuaded Mr. Pilarinos to accept payment. As Mr. Clark recognized in his testimony before me, simply pointing out to Mr. Pilarinos that, notwithstanding his generous intentions, acceptance of his gift could create a problem for Mr. Clark due to a perceived conflict of interest could have been an effective way of resolving the matter. It was the decision to accede to Mr. Pilarinos' wish not to receive any compensation that completed the acceptance of a benefit.

It is therefore my conclusion that Mr. Clark accepted a benefit which was connected directly or indirectly with the duties of his office, contrary to s. 7 of the Act.

In making this finding I recognize that I have the benefit of hindsight. However, I consider it entirely proper for the Act to catch both those violations carried out deliberately and those which arise through inadvertence. It is on the question of appropriate penalty that the distinction between these two types of violations may be taken into account.

I further recognize that problems involving potential issues of conflict of interest may quite inadvertently arise in the course of members' daily conduct. One of the most useful functions of the Conflict of Interest Commissioner is to give confidential and, if requested, even formal written advice to members in matters of this kind. Had such advice been sought in this case, I like to think that there would have been no need for this inquiry.

VI. RECOMMENDATIONS REGARDING PENALTY

I have concluded that Mr. Clark violated the Act in the following ways:

- by directing his Deputy Minister, Mr. George Ford, to review the decision-making process in respect of the 545738 B.C. Ltd./North Burnaby Inn proposal as a result of the allegations in the Karmelita letter that Mr. Clark had acted improperly, so as to exercise an official power when he was in an apparent conflict of interest, contrary to s. 3 of the Act; and

- by accepting the benefit of free construction services which was connected directly or indirectly with Mr. Clark's official duties, contrary to s. 7 of the Act.

Section 22 (1) of the Act provides that "if the commissioner finds... after an inquiry under section 21 that a member has contravened sections 3, 4, 5, 7, 8, 9 or 10(1)...", "the commissioner may recommend, in a report that is laid before the Legislative Assembly" [my emphasis], penalties ranging from a reprimand, a suspension, a fine not exceeding $5,000, to a declaration that the member's seat is vacant until an election is held in the member's electoral district.

This opinion was provided at the request of Executive Council under s. 19(3) of the Act. It is therefore to be reported to Executive Council, rather than to the Speaker of the Legislative Assembly for laying before the Legislative Assembly. It is thus may be argued that the provisions of s.22 with respect to recommendations in regard to an appropriate penalty do not apply in this case. This may, on the other hand, be an overly technical reading of the statute.

In the circumstances, I feel it appropriate to provide my recommendation with regard to penalty in this case for the assistance of those considering this matter.

I consider a mere reprimand entirely insufficient, but a declaration that Mr. Clark's seat be declared vacant to be too severe. A suspension would deprive the constituents of Mr. Clark's electoral district of a representative in the Legislative Assembly at a significant time, when the

Government is close to the end of its term. In my view, that penalty ought to be reserved for the gravest of cases.

A monetary penalty may in many cases be an appropriate alternative to a suspension, although the limit of $5,000 imposed under the Act is a significant restraint which might be usefully be reconsidered during the next revision of the Act.

In considering an appropriate monetary penalty in this case, however, it is my conclusion

that little need be added to the penalty which has been imposed by the course of events. The criminal investigation in relation to this matter led to Mr. Clark's resignation as Premier. He has thus already paid the ultimate political price. In addition, Mr. Clark has now been charged criminally and will face the adverse publicity of a public trial.

Having regard to these circumstances, and the fact that I have been asked to make a separate recommendation as to whether Mr. Clark's legal expenses in relation to this inquiry should be paid out of public funds, it is my view that there is no need for Mr. Clark to be subjected to any additional monetary penalty.

VII. RECOMMENDATIONS REGARDING S. 10

When asked, it has been my advice to members that the prudent course of conduct when they might be seen to have a private interest in a matter coming before government is to prepare a letter documenting their obligation to avoid any involvement and their instruction that they receive no briefing with respect to the matter and be warned in advance of any meeting where the matter might be discussed. Such a letter or memorandum should then be circulated to all those with responsibility for the member's activities and the information provided to him or her.

Essential to the effectiveness of such directions, is that the precise nature of the conflict not be disclosed. Excusing oneself on the basis that someone is "a friend", or, conversely, that someone has been an opponent or otherwise the source of difficulty for the member threatens to

undermine the very objective of avoiding allegations that the member has attempted to influence the matter because of his or her private interest.

As a result, it is my view that the standard set by the Act on this point falls somewhat short of prudent practice. Section 10 of the Act states as follows:

> *10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present a meeting considering the matter,*
>
> *(a) disclose the general nature of the conflict of interest, and*
>
> *(b) withdraw from the meeting without voting, or participating in the consideration of the matter.*

Section 10 goes on to provide that such disclosure is to be recorded and filed with the Conflict of Commissioner for inclusion in a central record kept for this purpose, which is accessible to the general public.

Section 10 thus contemplates that a member may wait until the very moment of discussion of the matter in which he or she might be said to have a conflict of interest before absenting him or herself. The far preferable course of action, in my view, is for the member to ensure not only that he or she is absent from the meeting altogether, but receives no written materials or verbal briefing with respect to the matter in question.

In addition, I have some concern that the requirement that the member disclose "the general nature of the conflict", does not adequately highlight the danger reviewed above that revealing too much about the nature of one's conflict can, inadvertently or otherwise, give rise to allegations that one has influenced the matter. To my mind, where a member finds him or herself at a meeting where a matter involving a potential conflict of interest is to be considered, the proper approach is for the member to reveal only that he or she has a potential conflict and

only the most general statement of the reason why, without revealing the specifics in any way. For example, disclosure of Mr. Clark's position in this case might have been phrased: "I have a potential conflict due to my knowledge of one of the proponents". The key is to disclose no indication of how the member's private interest might be furthered.

The Legislative Assembly may in the future wish to consider revisiting the specific terms of s.10.

Dated this 25th day of January, 2001
Victoria, British Columbia

H.A.D. Oliver, Q.C.
Conflict of Interest Commissioner

APPENDIX A

PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
R.S.B.C. 1996, CHAPTER 287

AND

IN THE MATTER OF AN INQUIRY PURSUANT TO S. 21
OF THE *MEMBERS' CONFLICT OF INTEREST ACT* INTO WHETHER THE
HONOURABLE GLEN CLARK, M.L.A. HAS BEEN IN BREACH OF ANY
OF THE SECTIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
IN CONNECTION WITH THE GRANTING OF APPROVAL-IN-PRINCIPLE
OF A GAMING LICENCE FOR THE NORTH BURNABY INN/545738 B.C. LTD.

**RULING ON APPLICATION OF DERRICK LUU
FOR FUNDING OF COUNSEL FEES**

On July 6, 1999, Mr. Derrick Luu appeared before me, in answer to a Summons issued by me, to testify as to his knowledge of the subject matter of my Inquiry. He was accompanied by his counsel Mr. Edward Wong. At the end of Mr. Luu's examination by Mr. Leonard Doust, Q.C., Commission Counsel, Mr. Wong applied on behalf of his client for funding for counsel's attendance at his client's examination.

Mr. Wong acknowledged that the legislation pursuant to which Mr. Luu's attendance was required, the *Members' Conflict of Interest Act*, does not address this issue, but submitted that Mr. Luu's attendance necessitated the presence of counsel. He submitted that it was within the Commissioner's discretion to make an order for payment of counsel for the witness out of public funds, and said that he believed such orders may have been made in other inquiries.

Commission Counsel argued that Mr. Luu was a mere witness who could not be characterized as a person directly affected by this Inquiry (unlike others in the inquiries alluded to by Mr. Wong) He argued that there was little distinction between the position of a witness at an inquiry and a witness in a trial and that, although witnesses may have the option of retaining counsel to represent them, that remains a matter of personal choice.

Following submissions, I asked that Mr. Wong provide to Commission counsel, within seven days, any references to other commissions of inquiry where an order has been made for payment out of public funds of counsel fees of one who was a witness only, and neither directly involved as a complainant nor in jeopardy as the result of the inquiry. No such submission has been received.

Although I have some doubt as to my authority to make the type of Order sought that is not an issue I find it necessary to address.

In conducting this Inquiry, I am mindful of my responsibility in respect of the expenditure of public funds. Whilst recognizing that the matter into which I am inquiring is one of substantial importance both to Executive Council, who requested my opinion and to the people of the Province, I believe I must conduct my Inquiry with the utmost frugality consistent with fairness.

I am grateful for Mr. Luu's cooperation and will pay due heed to his evidence. His participation in this Inquiry, however, has been purely that of a witness. His rights are not in issue, nor will he be in any jeopardy as a result of any finding I may make.

This is an Inquiry not an adversarial proceeding. It will in due course lead to an opinion which the Executive Council of British Columbia may or may not choose to adopt. Any witness appearing before me in this Inquiry wishing to have his or her counsel present during his or her examination will be accommodated. Whether or not such representation is in fact required is a matter between client and counsel. The nature and extent of the involvement of Mr. Luu in the subject matter of this Inquiry are not such as to persuade me to make the Order sought nor to create a precedent likely to encourage all other witnesses appearing before me in the Inquiry to advance similar applications. The application is therefore dismissed.

Dated this 13th day of August, 1999 at the City of Vancouver, in the Province of British Columbia.

THE HONOURABLE H.A.D. OLIVER, Q.C.
CONFLICT OF INTEREST COMMISSIONER

APPENDIX B

PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
R.S.B.C. 1996, CHAPTER 287

AND

IN THE MATTER OF AN INQUIRY PURSUANT TO S. 21
OF THE *MEMBERS' CONFLICT OF INTEREST ACT* INTO WHETHER THE
HONOURABLE GLEN CLARK, M.L.A. HAS BEEN IN BREACH OF ANY
OF THE SECTIONS OF THE *MEMBERS' CONFLICT OF INTEREST ACT*
IN CONNECTION WITH THE GRANTING OF APPROVAL-IN-PRINCIPLE
OF A GAMING LICENCE FOR THE NORTH BURNABY INN/545738 B.C. LTD.

**RULING ON APPLICATION OF PACIFIC PRESS,
PUBLISHER OF THE VANCOUVER SUN**

This is an application on behalf of Pacific Press, the publishers of the Vancouver Sun, for a direction that all or part of this Inquiry be conducted in public.

By letter to my counsel dated July 28, 1999, Mr. Robert Anderson, counsel the Applicant sought access to the proceedings of my Inquiry for his client, and, in the event that there was an issue as to whether or not my Inquiry was to be held in public, the opportunity to make representations before me in this regard. On Friday August 6, 1999, I made myself available to hear Mr. Anderson on this issue.

In his submissions before me, Mr. Anderson conceded that, on the authority of the decisions of the British Columbia Supreme Court and Court of Appeal in the case of *Tafler v. British Columbia (Commissioner of Conflict of Interest)*, [1985] B.C. J. No. 1042 (S.C.) and [1988] B.C.J. No. 1332 (C.A), I have an absolute discretion as to how to conduct my Inquiry, including a discretion as to whether to conduct it in public. These decisions confirm that as an officer of the Legislative Assembly (see s.14(1) of the *Members' Conflict of Interest Act*), I have the benefit of the privileges of the Legislative Assembly and the authority to make my own decisions regarding public access to my proceedings.

Mr. Anderson, however, urged me to exercise my discretion to hold as much of my Inquiry in public "as can possibly be conducted without impairing its effectiveness". Mr. Anderson provided me with examples of some public inquiries where various arrangements were made with respect to the presence of television cameras, such as allowing each witness to decide whether or not he or she was comfortable with being videotaped, to illustrate that there is a range of options available in terms of allowing limited media access to a process of this kind.

Mr. Anderson referred me to passages from the Supreme Court of Canada decision in *Phillips* v. *Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97 which highlight the important function which public inquiries may serve in holding open and public hearings to inform and educate concerned members of the public about the community problem or government institution under examination.

Mr. Anderson submitted that this Inquiry is of profound interest and concern to the citizens of the Province, and that scrutiny resulting from the presence of the public at my Inquiry might even assist in eliciting the truth.

Commission Counsel very properly refrained from taking any position as to how I should exercise my discretion in this matter.

I am mindful that my Inquiry is not a public inquiry like those cited to me by Mr. Anderson, as was the inquiry into the Westray mine disaster. Although, in conducting my Inquiry I have powers of summons and contempt arising under the British Columbia *Inquiry Act*, my Inquiry (unlike those cited to me by Mr. Anderson) arises not under the *Inquiry Act*, but under the *Members' Conflict of Interest Act*, the statute which I have the responsibility to administer. Though my role in conducting this Inquiry is in some ways similar to that carried out by a Commissioner appointed under the *Inquiry Act*, it is also unique.

One of my responsibilities under the *Members' Conflict of Interest Act* is to provide my opinion, when requested, as to the compliance of a member of the Legislative Assembly with the requirements of the Act. Such requests may come from another member, from a member of the public, from the Executive Council (commonly referred to as the "cabinet"), or from the Legislative Assembly. The request for an opinion which has given rise to this Inquiry is one which I received from the Executive Council. As a result, in accordance with s.21(6) of the *Members Conflict of Interest Act*, the opinion I reach following the conclusion of my Inquiry must be reported to the Secretary of the Executive Council.

Although I am enjoy complete independence and absolute freedom from any form of political interference in the manner in which I conduct my statutory responsibilities and in the opinions I reach under the *Members' Conflict of Interest Act*, the services I provide are for the assistance of the Legislative Assembly. In his decision in the *Tafler* case, Melvin J. summarized the role of the Conflict of Interest Commissioner in conducting an investigation or inquiry under the *Members' Conflict of Interest Act* as follows, at paragraph 53 of his reasons:

> "In the final analysis, the Commissioner is acting for and on behalf of the Legislative Assembly in providing that body with information and opinion. The nature of the investigation relates to the functioning of the member of the Legislative Assembly. Control over members or a member, or sanction of a member, remains with the Legislative Assembly. In my opinion, information gathering which may assist the Assembly in dealing with its own members is a vital step in the decision of the legislature and is necessary to the proper functioning of the Assembly . . . Consequently, the manner in which it chooses to deal with its members in the context is one cloaked with privilege, the exercise of which is not reviewable. The public knowledge interest will be met by the Legislative Assembly dealing in its proceedings publicly, if it wishes, with the information and the opinion it receives in the usual fashion in the legislative chamber."

Although, in this instance, by s.21(6), my opinion is, to be provided to Executive Council rather than to the Legislative Assembly, the comments of Melvin J. are apposite to my

role vis a vis the Executive Council. My mandate is to gather information and provide an opinion to Executive Council to assist it in dealing with an issue that has arisen surrounding one of its members.

In his investigation of Premier Harcourt, my predecessor the Honourable E.N. (Ted) Hughes, Q.C., chose to conduct his proceedings in private. That decision was upheld in the court proceedings challenging this decision which were subsequently brought by Mr. Sid Tafler of Victoria's *Monday Magazine* referenced above. In so doing, in the passage cited above, Melvin J. of the British Columbia Supreme Court concluded that "the public knowledge interest will be met by the Legislative Assembly dealing in its proceedings publicly, if it wishes, with the information and the opinion it receives in the usual fashion in the legislative chamber".

The proceedings of Executive Council, or cabinet, are subject to the doctrine of public interest immunity and by law generally remain confidential. Executive Council, if and when it wishes, may opt to deal with my opinion publicly. I understand that it is the intention of Executive Counsel to make my report public in due course. Until it exercises that prerogative, my report and the steps leading up to it will remain confidential.

An equally important reason in the present case for exercising my discretion in favour of conducting my proceedings in private arises from the ongoing criminal process related to the subject matter of my Inquiry. Before embarking upon my Inquiry, I seriously considered the question of whether it was appropriate for me to proceed with the mandate I have been given by Executive Council prior to the conclusion of both the criminal investigation and any trial which may result. I have concluded that it is. Executive Council and, by extension, the citizens of the Province, are entitled to know whether or not the Premier conducted himself in a manner prohibited by the *Members' Conflict of Interest Act*. The public importance of such matters is the reason for which the *Members' Conflict of Interest Act*, and the office I hold thereunder, were created. Should criminal charges result from the current criminal investigation, the trial of individuals charged might take place many months, if not years, from now. In the circumstances,

I believe it imperative to proceed with this Inquiry under the *Members' Conflict of Interest Act*, and to do so forthwith.

That said, I am mindful of avoiding any interference with or compromise of the ongoing criminal process. I am concerned that conducting my Inquiry in public, which no doubt would result in the publication of details of evidence I receive, has the potential of creating a significant impact on subsequent criminal proceedings, resulting in a danger of prejudice to the prosecution or the defence. That is a risk I am, at this stage, in duty bound to avoid.

The application is therefore dismissed.

Dated this 13th day of August, 1999 at the City of Vancouver, in the Province of British Columbia.

THE HONOURABLE H.A.D. OLIVER, Q.C.
CONFLICT OF INTEREST COMMISSIONER

BRITISH COLUMBIA

January 25, 2001

PRIVATE AND CONFIDENTIAL
TO BE OPENED BY NAMED RECIPIENT ONLY

Gillian Wallace, Q.C.
Deputy Attorney General
Ministry of the Attorney General
PO Box 9290, Stn. Prov. Gov't
Victoria, British Columbia
V8W 9J7

Dear Deputy Attorney General:

Re: Conflict of Interest Inquiry

By letter dated March 18, 1999, I was asked by Ms. Maureen Maloney, former Deputy Attorney General, to make a recommendation as to whether the Honourable Glen Clark, MLA should be required to reimburse the government for his legal expenses in relation to my Inquiry, in the event that I concluded that Mr. Clark committed a breach of the *Members' Conflict of Interest Act* (the "Act").

I have now delivered to the Secretary to Executive Council my Opinion that Mr. Clark breached section 3 of the Act, by exercising an official power when he was in an apparent conflict of interest, and section 7 of the Act, by accepting a personal benefit that was connected directly or indirectly with the performance of his duties of office.

In formulating my recommendation with respect to payment of Mr. Clark's legal fees in relation to my Inquiry, I have considered the government policy in relation to the indemnification of Ministers and excluded employees in respect of actions, proceedings or claims that arise in connection with a Minister's office or in relation to legal proceedings where the Minister or employee's personal legal position may be prejudiced if he or she did not have legal advice or counsel.

Office of the Conflict of Interest Commissioner
The Honourable H. A. D. Oliver, Q.C.
Commissioner
Mailing Address
101-431 Menzies Street
Victoria, BC V8V 1X4
Telephone (250) 356-9283
Facsimile (250) 356-6580

The policy regarding Government Indemnity of Ministers dated August 1, 1996 appears to provide indemnity for a Minister in respect of any proceedings that arise "in connection with his or her office as Minister". The policy with respect to excluded employees provides an indemnity where the employee is sued for anything done or omitted to be done in the course of his or her office or employment where the employee's conduct "was within his or her office or course of employment and was in good faith".

The violations of the Act I have found Mr. Clark to have committed do not involve a finding of deliberate wrong doing on Mr. Clark's part. Rather, they reflect a finding that Mr. Clark violated an objective standard for appropriate conduct, as formulated in the Act, by failing to take steps to ensure that his discharge of the duties of his office did not appear to be compromised by his personal dealings.

The violation of section 3 of the Act which I have found relates to Mr. Clark's receipt of correspondence at his constituency office in which serious allegations were made against him and his subsequent directions to government personnel in responding to it. Although it is my conclusion that a reasonably well informed person could properly have a reasonable perception that Mr. Clark's exercise of his official powers in directing the response of government personnel to this correspondence must have been affected by his private interest, I have rejected a finding that Mr. Clark was thereby deliberately seeking to further his private interest.

I am therefore prepared to characterize this violation of the Act as one which arose in connection with Mr. Clark's office as Premier and in relation to which Mr. Clark acted in good faith, albeit in violation of the Act.

The violation of section 7 of the Act which I have found relates to Mr. Clark's decision to accept a gift of free construction services for his family home in Vancouver. Although I have not made a finding that Mr. Clark was thereby engaged in a deliberate effort to take advantage of his official position, I am satisfied that he failed to adhere to the standard of care required of a person in his position. As this aspect of the matter arose within the scope of Mr. Clark's personal affairs, it does not seem to me to fall within the realm of circumstances for which government indemnification of legal expenses is contemplated.

In light of the above comments, it is my recommendation that Mr. Clark should be required to reimburse the government for one half of the amount paid for legal fees in relation to advice and representation of Mr. Clark during the course of my Inquiry.

I have taken care to ensure the confidentiality of the proceedings before me, having regard to ongoing criminal proceedings involving Mr. Clark and others affected by my Inquiry. You will be aware that Associate Chief Justice Dohm, to avoid prejudicing either Crown or Defence, has asked that my Opinion remain sealed until the end of the criminal process, or further order. I would accordingly ask that the particulars set out above be treated with complete confidentiality. Please do not hesitate to contact me if you wish to discuss this matter further.

Yours truly,

H.A.D. Oliver
Commissioner

INDEMNITY

Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Finance and Corporate Relations (the "Government") hereby indemnifies Premier Glen Clark (the "Premier") with respect to the payment of legal fees incurred by the Premier in association with the government's decision to grant approval in principle for a charity casino license to 545738 B.C. Ltd. as follows:

1. Conflict of Interest Investigation

The Government will pay for reasonable legal fees incurred by the Premier to obtain advice and representation in any conflict of interest investigation commenced in relation to the above matter. If the Premier is found to have committed a breach of the *Members' Conflict of Interest Act*, the Conflict of Interest Commissioner will be asked to make a recommendation, taking into account the seriousness of the breach, as to whether the Premier should be required to reimburse the Government for the legal fees paid on his behalf. If the Commissioner recommends repayment of some or all of the fees (the "Amount") and this recommendation is accepted by the Government, the Premier will be required to reimburse the Government for the Amount and the Amount of the fees will immediately become a debt owing to the Government.

2. Criminal Investigation

The Government will pay for reasonable legal fees incurred by the Premier in relation to the ongoing criminal investigation into the above matter unless or until the Premier is convicted of an offence relating to this matter.

In the event that the Premier is convicted of an offence, payment of his legal fees will be discontinued and, if the Premier does not appeal, the Premier will be required to reimburse the government for any legal fees it has paid on his behalf in relation to these proceedings and the amount of the fees paid will immediately become a debt owing to the Government.

If the Premier appeals and after all appeals have been exhausted and the Premier is acquitted, reasonable legal fees incurred during the appeal proceedings will be paid by the Government.

If the Premier appeals and after all appeals have been exhausted, the conviction is upheld, the Premier will be required to reimburse the government for any legal fees it has paid on the Premier's behalf in relation to these proceedings and the

amount of the fees paid will immediately become a debt owing to the Government.

This Indemnity is given this 5th day of March, 1999.

Joy K. MacPhail
Minister of Finance and
Corporate Relations

BRITISH COLUMBIA

INFORMATION BULLETIN

For Immediate Release
2002AG0083-000981
Nov. 19, 2002

Ministry of Attorney General

GLEN CLARK CONFLICT REPORT, COSTS RELEASED

VICTORIA – The conflict of interest commissioner's report on former B.C. premier Glen Clark was tabled in the legislature today by Attorney General Geoff Plant.

H.A.D. Oliver's report into whether Clark breached the Conflict of Interest Act in connection with the granting of approval-in-principle of a gaming licence for the North Burnaby Inn is dated Jan. 25, 2001. It was released after all the appeal periods relating to the legal case involving Clark and Dimitrios Pilarinos expired on Monday.

Related documents also released today are:

- Glen Clark's indemnity for legal fees for both the criminal investigation and the conflict of interest inquiry, granted by the former government in March 1999.
- A letter from the conflict of interest commissioner (also dated Jan. 25, 2001) containing recommendations on whether Clark should pay his legal fees for the conflict of interest inquiry. The government has accepted the commissioner's recommendation that Clark pay half of those legal fees.

The government has also released the legal costs of both the conflict of interest inquiry and the subsequent trial. These are:

- Cost of Clark's legal advice and representation in the conflict matter: $107,174 (as of July 19, 2002).
- Cost of Clark's legal advice and representation in the criminal matter: $1,299,142 (as of July 19, 2002).
- Estimated special prosecution costs for the Clark and Pilarinos trial: $1,517,344.

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Conflict of interest report, Appendix A, Appendix B

Conflict of interest commissioner's letter

Indemnity

Visit the province's Web site at http://www.gov.bc.ca/ for online information and services.

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